

**SREEDHAR JAYARAMAN  
WRITING SAMPLE****RELIEF REQUESTED**

Jane Doe is a hardworking forty-five year old taxpayer that lives in Duncan, Mississippi with her son. Mrs. Doe's home is owned by her husband though they are no longer together and have lived apart for almost five years. Her husband does not contribute to her income except through his child support payments of \$70 each month. Her husband does not pay any of her monthly bills. Mrs. Doe faces much more than financial hardship daily as she also suffers from sleep apnea and bronchitis. Mrs. Doe is still able to work despite her health. Unfortunately, a problem that is common to many residents of the Mississippi Delta, one of Mississippi's and the Nation's poorest regions, is a reality for Mrs. Doe as her monthly expenses greatly outweigh her income. Mrs. Doe respectfully submits this offer-in-compromise based upon doubt as to collectability with special circumstances for her tax liability of approximately \$9,963.00 with respect to the 2015 tax year.

Under § 7122 of the Internal Revenue Code, "[t]he Secretary may compromise any civil or criminal case arising under the internal revenue laws prior to reference to the Department of Justice for prosecution or defense." Mrs. Doe submits this offer based upon doubt as to collectability, with special circumstances, as outlined by Treasury Regulation § 301.7122-1(b)(2) (effective as of July 18, 2002). This section of the Regulations includes doubt as to collectability, with special circumstances, as one of three grounds for compromise.

Mrs. Doe's sole source of income is from Wages earned at HealthCare Plus in the amount of \$1,224.00, which is below the \$2,513.00 standard thus qualifying her for Low-Income Certification. In addition to wages, the only other source of income received by Mrs. Doe is child support for her son in the amount of \$70.00 per month. Economic hardship from her inability to pay for the most basic monthly necessities create special circumstances.

Mrs. Doe offers \$25.00.

**PROCEDURAL BACKGROUND**

Mrs. Doe's tax liability arose from unpaid federal income tax liabilities for the 2015 tax year. Mrs. Doe claimed both her step-sister and step-niece that lived with her that year as dependents in addition to her own son. Once reviewed by the IRS on July 8, 2016, this filing resulted in a tax liability that she was unable to pay. Mrs. Doe has not been able to make payments against the liability and is currently in non-collectible status.

Mrs. Doe contacted the Low Income Taxpayer Clinic at North Mississippi Rural Legal Services in December of 2017. **See Exhibit 4 (Power of Attorney Form 2848).** Jurisdiction currently lies with Collections. Mrs. Doe has complied with all past filing requirements and intends to comply fully in the future with all required tax filings.

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**STATEMENT OF FACTS**

Mrs. Doe is forty-five years old and separated from her husband. However, their son still lives with Mrs. Doe. For about five years Mrs. Doe has had to take care of both herself and her son with little to no help from her husband except the child support that she receives monthly. Currently this is only \$70.00. Mrs. Doe receives \$249.00 monthly in Food Stamps. Mrs. Doe has no higher education degrees and has to work to ensure that all her bills are paid and necessities are met as her income is all she and her son have to live off of each month.

Mrs. Doe receives \$1,224.00 per month in wages from HealthCare Plus. **See Exhibit 5 (Pay Stubs)**. Her basic expenditures are \$1,732.00. **See Exhibit 6 (Monthly Household Bills)**. This does not even include the National Standard that would be allowed for her son nor his monthly expenses. Mrs. Doe has no expendable income left each month and it is not uncommon for some bills to go unpaid in order to pay those that most directly impact her livelihood and the basic welfare of her son. Mrs. Doe's financial situation makes surviving month to month an uncertain prospect.

Mrs. Doe has no assets that she can sell or mortgage to pay her liability. She and her son live in a home that is not in her name. Mrs. Doe's name is not on the deed and at any time her estranged husband can come and force her to move out if he so chooses. Mrs. Doe neither pays property insurance nor property taxes. These facts support the assertion by Mrs. Doe that she has no equity in her home.

The following chart explains Mrs. Doe's current monthly expenses.

<b>Food, Clothing, and Miscellaneous</b>	
<b>National Standard (One person household)</b>	<b>\$639</b>
<b>Housing and Utilities</b>	
Rent	<b>\$0</b>
Property Taxes	<b>\$0</b>
Real Property Insurance	<b>\$0</b>
Miscellaneous Home Expenses	<b>\$75</b>
Water/Sewage	<b>\$53</b>
Electricity	<b>\$87</b>
Telephone	<b>\$50</b>
Gas	<b>\$78</b>
Cable/Internet	<b>\$150</b>
<b>Total Housing and Utilities</b>	<b>\$493</b>
<b>Transportation</b>	
Operating Expenses (Insurance, Gas, Upkeep)	<b>\$313</b>
Vehicle Loan Payments	<b>\$238</b>
<b>Total Transportation Cost</b>	<b>\$551</b>
<b>Other Expenses</b>	
Out of Pocket Health Care Costs	<b>\$49</b>

**SREEDHAR JAYARAMAN  
WRITING SAMPLE**

<b>Total Other Expenses</b>	<b>\$49</b>
<b>Total Monthly Expenses</b>	<b>\$ 1,732</b>

Mrs. Doe elects to take the monthly national standard for food, clothing, and necessities of \$639.00 and for out of pocket health care costs of \$49.00. Mrs. Doe's vehicle operating expenses are higher than the regional standard of \$215.00 because she owns a 2006 GMC Envoy XL. It is her only vehicle and she uses it both to travel around 40 miles daily to and from Cleveland, MS for work as well as for the welfare of her son. Her household expenses average around \$493.00 per month. Mrs. Doe pays about \$100.00 per month in out of pocket health insurance costs however only the national standard of \$49.00 for out of pocket health care costs are reflected in the total monthly expenses above. Mrs. Doe has credit cards and loans which are not included in the total monthly expenses above which account for about \$700.00 owed to various creditors totaling \$880.00 monthly as she has to continuously borrow more money just to roll over her debts and stave off insolvency month to month. Mrs. Doe's current financial situation reflects that she is in the negative from month to month.

Mrs. Doe has a bank account. Her balance as of February 14, 2018 was \$20.00. Mrs. Doe frequently overdrafts because she is unable to pay her most basic living expenses as evidenced by her bank statements. **See Exhibit 7 (Bank Statements).**

### STATEMENT OF LAW

Under § 7122 of the Internal Revenue Code, "[t]he Secretary may compromise any civil or criminal case arising under the Internal Revenue laws prior to reference to the Department of Justice for prosecution or defense."

IRC § 7122 includes doubt as to collectability, with special circumstances, as one of three grounds for compromise. "Doubt as to collectability exists in any case where the taxpayer's assets and income are less than the full amount of the liability." (Treas. Reg. § 301.7122-1(b)(2) (effective as of July 18, 2002))

Treasury regulations provide the following guidance for how to assess "doubt as to collectability:"

A determination of doubt as to collectability will include a determination of ability to pay. In determining ability to pay, the Secretary will permit taxpayers to retain sufficient funds to pay basic living expenses. The determination of the amount of such basic living expenses will be founded upon an evaluation of the individual facts and circumstances presented by the taxpayer's case. To guide this determination, guidelines published by the Secretary on national and local living expense standards will be taken into account.

(*Id.* § 301.7122-1(c)(2) (2002))

**SREEDHAR JAYARAMAN  
WRITING SAMPLE**

Mrs. Doe submits this offer based on doubt as to collectability, with special circumstances as outlined by Treasury Regulation § 301.7122-1(b)(2) (2002).

**APPLICATION OF LAW TO FACTS**

Mrs. Doe relies on her wages earned from HealthCare Plus, child support, and food stamps. While Mrs. Doe's income is \$1,294.00 per month, her expenses greatly exceed this amount and leave her with unpaid bills and no expendable monthly income. Due to these facts, it is highly unlikely that she will be able to pay the IRS the full amount owed any time in the future, especially given her age and educational background. The funds for this offer are being taken from Mrs. Doe's already compromised wage income.

Mrs. Doe does not own or have equity in any assets to sell or mortgage to help pay this tax liability and she does not have any other source of funds. Mrs. Doe's situation falls within the doubt as to collectability, with special circumstances, constituting grounds for acceptance of an offer in compromise, and the Secretary is authorized to compromise her tax liability.

**CONCLUSION**

Based on the conditions stated above, Mrs. Doe respectfully requests that the IRS accept her offer of \$25.00 to compromise her tax liability for the 2015 tax year. She is incapable of raising additional money for a greater offer and would like to take this opportunity to settle her tax liability. The funds for this offer will be paid from Mrs. Doe's wage income.

**Applicant Details**

First Name **Alicia**  
 Middle Initial **F**  
 Last Name **Johnson**  
 Citizenship Status **U. S. Citizen**  
 Email Address [ajohnson@albanylaw.edu](mailto:ajohnson@albanylaw.edu)

Address  
**Address**  
**Street**  
**171 WASHINGTON AVE**  
**City**  
**VALLEY STREAM**  
**State/Territory**  
**New York**  
**Zip**  
**11580**  
**Country**  
**United States**

Contact Phone Number **6468120518**

**Applicant Education**

BA/BS From **State University of New York-Binghamton**  
 Date of BA/BS **May 2016**  
 JD/LLB From **Albany Law School**  
<http://www.albanylaw.edu/>  
 Date of JD/LLB **December 21, 2020**  
 Class Rank **15%**  
 Law Review/Journal **Yes**  
 Journal(s) **Albany Law Review**  
 Moot Court Experience **Yes**  
 Moot Court Name(s) **ABA Client Counseling Regionals, Semi-Finalist**  
**Donna Jo Morse Client Counseling Competition: Winner**  
**Domenick L. Gabrielli Appellate Advocacy Competition: Winner**

## Bar Admission

Admission(s)      **New York**

## Prior Judicial Experience

Judicial Internships/  
Externships      **Yes**  
Post-graduate Judicial  
Law Clerk      **Yes**

## Specialized Work Experience

## Professional Organization

Organizations      **Just the Beginning Foundation**

## Recommenders

Redwood, James  
jredw@albanylaw.edu  
(518) 472-5839  
Brescia, Ray  
rbres@albanylaw.edu  
(518) 445-3247  
Chung, Christine H.  
cchung@albanylaw.edu

## References

Judge Daniel Stewart: (518) 257-1842 (chambers) or (518) 338-8091  
(cell phone)

Dean Troy Riddle: (267) 257 9369 (cell phone)

**This applicant has certified that all data entered in this profile and  
any application documents are true and correct.**

Alicia Johnson

98 Morningside Ave., Apt 23, New York, NY 10027 | 646-812-0518 | [AJohnson@albanylaw.edu](mailto:AJohnson@albanylaw.edu)

August 21, 2020

Honorable Elizabeth Hanes  
Spottswood W. Robinson III & Robert R. Merhige, Jr.  
United States District Court  
701 East Broad Street, 5th Floor  
Richmond, VA 23219

Dear Magistrate Judge Hanes:

I am a first-generation law student graduating from Albany Law School in December 2020 and am writing to express my interest in beginning my legal career as your clerk for the 2021 – 2023 term. During the summer following my first year of law school, I interned with Judge Analisa Torres in the United States District Court for the Southern District of New York. Because of the intellectual rigor and challenging assignments, this formative experience confirmed for me my interest in pursuing a post-graduate clerkship. I am confident the foundational research, writing and analytical skills I gained through this internship, and continue to build through my coursework and my experience as Executive Editor of Notes & Comments on *Albany Law Review* will prepare me to make valuable contributions as your law clerk should I be offered the opportunity.

During my internship with Judge Torres, I realized my aptitude for understanding complex federal litigation matters. While conducting extensive legal research and preparing drafts of numerous judicial opinions, I deepened my understanding of federal procedure and gained insight into the adjudication process. Seeking to continue to develop my knowledge of federal procedure, I subsequently completed a course with Magistrate-Judge Daniel Stewart of the Northern District of New York that focused on the nuances of §1983 jurisprudence. Additionally, I interned with the United States Attorney's Office for the Northern District of New York, and this past summer, I interned with the Manhattan District Attorney's Office. I hope to pursue a career in public service.

In support of my application, I enclose my resume, transcript, and writing sample, which is a judicial order I wrote for Judge Torres. Additionally, Professors Christine Chung, Raymond Brescia, and James Redwood have agreed to write letters of recommendation on my behalf, which will be sent under separate cover. Judge Stewart has also agreed to serve as a reference and may be reached in his chambers at (518) 257-1842 or by cellphone at (518) 338-8091. Thank you for taking the time to consider my credentials. I hope to have the opportunity to interview with you.

Respectfully,

Alicia Johnson

## Alicia Johnson

98 Morningside Ave., Apt 23, New York, NY 10027 | 646-812-0518 | [AJohnson@albanylaw.edu](mailto:AJohnson@albanylaw.edu)

### EDUCATION

#### **Albany Law School of Union University, Albany, NY**

Candidate for Juris Doctor, December 2020

GPA: 3.6 (Dean's List, Spring 2019 and Spring 2020)

Honors: Executive Editor for Notes & Comments, ALBANY LAW REVIEW VOL. 84

David A. Wanger Memorial Award

Winner, Donna Jo Morse Client Counseling Competition

Winner, Domenick L. Gabrielli Appellate Advocacy Competition

Semi-Finalist, ABA Client Counseling Regional Competition

Thomas Sponsler Fellowship (Fall 2019 Civil Procedure Teaching Assistant)

1L & 2L Member of the Year, Mentor of the Year, Black Law Students Association

Activities: Black Law Students Association (BLSA); Research Assistant, Dean Troy Riddle, Diversity & Inclusion; Research Assistant, Professor Edward De Barbieri; Student Ambassador, Admissions Office; Student Representative 2018-2019, Student Affairs Faculty Committee

#### **State University of New York at Binghamton, Binghamton, NY**

Bachelor of Arts, in Sociology, May 2016

Activities: President, Caribbean Student Association; Thurgood Marshall Pre-Law Society; Teaching Assistant, Professor Reynaldo Ortiz

### LEGAL EXPERIENCE

#### **Manhattan District Attorney's Office, New York, NY**

*Summer Fellow (remote due to Covid-19)*

June 2020—July 2020

Participated in a mock suppression hearing. Researched and wrote a 440.10 motion. Observed virtual arraignments.

Attended daily lectures and case studies. Updated manual on grand jury definitions checklist for current ADAs.

#### **United States Attorney's Office for the Northern District of New York, Albany, NY**

*Legal Intern*

August 2019—May 2020

Drafted memoranda on evidentiary issues. Researched federal sentencing guidelines and recommended appropriate sentences. Observed court proceedings and settlement conferences.

#### **Whiteman, Osterman & Hanna, Albany, NY**

*Law Intern*

January 2020—March 2020

Researched and drafted memoranda on labor and employment issues. Edited and revised corporate governance documents.

#### **Bond, Schoeneck & King, PLLC, Albany, NY**

*Law Clerk*

September 2019—December 2019

Conducted research and drafted memoranda on labor and employment, tax, and cybersecurity law.

#### **The Honorable Analisa Torres, United States District Court, Southern District of New York, New York, NY**

*Judicial Intern*

June 2019—August 2019

Researched criminal and civil matters. Prepared drafts of pre-trial orders and judicial opinions. Observed initial pre-trial conferences, plea hearings, and sentencings with the judge and counsel.

### ADDITIONAL EXPERIENCE

#### **AMC Theatres, Binghamton, NY and New York, NY**

*Manager*

May 2015—August 2018

Hired and led a diverse team of 100 employees. Identified top talent and developed individuals for promotions. Resolved guest concerns. Implemented strategies to drive sales and guest loyalty.



**Alicia Johnson**  
**Albany Law School**  
**Cumulative GPA: 3.6**

**Fall 2018**

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Civil Procedure	Professor Brescia	A+	4	
Contracts 1	Professor Chung	A-	3	
Lawyering	Professor Moloney	B	3	
Property 1	Professor Halewood	B-	2	
Torts	Professor Heverly	B	4	

**Spring 2019**

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Constitutional Law	Professor Redwood	A-	4	
Contracts 2	Professor Chung	A	2	
Criminal Law	Dean Haynes	A-	3	
Lawyering	Professor Moloney	A	3	
Property 2	Professor Halewood	A-	4	

Dean's List-- Spring 2019

**Summer 2019**

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Summer in Practice	Professor Shuk	P	5	
Summer in Practice-Classroom	Professor Shuk	A-	1	

**Fall 2019**

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Constitutional Law: 1st Amendment	Professor Redwood	A-	2	
Criminal Procedure: Adjudication	Professor Sprotberry	C+	3	
Evidence	Professor Hutter	B+	4	
Field Placement Classroom	Professor Batson	A-	1	
Financial Crimes	Professor Chung	A	2	
USAO Field Placement	Professor Maurer	P	3	

Honors Teaching Fellowship-- 2 CR

**Spring 2020**

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Business Organizations	Professor Chung	A-	4	
Civil Rights Liability Litigation	Judge Stewart	A+	3	
Federal Jurisdiction	Professor Hutter	A-	3	

Field Placement Classroom	Judge Kretser	A	1
USAO Field Placement	Professor Maurer	P	4
Dean's List-- Spring 2020			
Law Review-- 2 CR			

**Summer 2020**

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Legal Profession	Dean Mayer	B	3	
Secured Transactions	Professor Moloney	A	2	



ALBANY LAW SCHOOL

80 NEW SCOTLAND AVENUE, ALBANY, NEW YORK 12208-3494  
TEL: 518 445 2311 FAX: 518 445 2315 WWW.ALBANYLAW.EDU

May 6, 2020

**RE: Clerkship Recommendation**

Dear Judge:

Alicia Johnson, who is currently completing her second year in the J.D. program at Albany Law School, with an expected graduation date of December, 2020, is applying for a judicial clerkship position on your staff. She has asked me to write a letter of recommendation on her behalf. I am delighted to do so.

I have known Alicia since her second semester in law school, when she was a student in my basic Constitutional Law class. She was always well prepared, serious, and focused, and she went the extra mile to make sure she mastered this rather challenging area of the first-year curriculum. She asked thoughtful and probing questions and showed an interest in the subject matter that made her stand out among her colleagues. Her hard work paid off at the end of the semester, when she received the excellent grade of A-, which was well above the curve. Alicia followed up this sterling performance when she took my First Amendment seminar in the fall semester of her second year and got an A- as well. She is a fine student with the kind of motivation, conscientiousness, and intellectual bent that a professor always finds, perhaps because of its rarity, so gratifying.

Alicia has excelled notably at Albany Law School. Not only is she on the Albany Law Review, where I have had the privilege of supervising her second-year note on the Constitutional implications of previous conviction sentence enhancement schemes, in which she has demonstrated remarkable analytical insight, but she is also a skilled oral advocate. Alicia, along with her teammate, has won not one but two of the law school's coveted moot court competitions, the Donna Jo Morse Client Counseling Competition and the Domenick L. Gabrielli Appellate Advocacy Competition. She was also a semi-finalist in the ABA Client Counseling Regional Competition. She has been on the Dean's List at Albany Law School, a fitting testament to her diligence and commitment to her legal education. She would make an excellent judicial clerk, and I am pleased to recommend her to your attention.

Sincerely,

James D. Redwood  
Professor of Law  
jredw@albanylaw.edu

RAYMOND H. BRESCIA  
*Hon. Harold R. Tyler Chair in Law & Technology*  
Albany Law School  
80 New Scotland Avenue  
Albany, NY 12208

August 21, 2020

Honorable Elizabeth Hanes  
United States District Court  
Spottswood W. Robinson III &  
Robert R. Merhige, Jr. Federal Courthouse  
701 East Broad Street, 5th Floor  
Richmond, VA 23219

**Re: Letter of Recommendation for Alicia Johnson**

Dear Judge Hanes:

Please accept this letter of support for the application of Alicia Johnson to serve as a law clerk in your chambers. I had the pleasure of having Ms. Johnson enroll in the first-year Federal Civil Procedure class I teach at Albany Law School, where she excelled; based on her performance in this class, I then asked her to serve as my teaching assistant in that class this past fall. Due to my familiarity with Ms. Johnson's work product and work ethic, I can safely say that Ms. Johnson embodies the highest principals of the profession and it is for these reasons, as set forth below, that I recommend Ms. Johnson to you in only the strongest and most enthusiastic terms.

I was fortunate to have Ms. Johnson selected for my Federal Civil Procedure class I teach to first-year students here at Albany Law. What more can I say than she received the very rare "A+" as her final grade that semester, the highest grade in the class. Ms. Johnson was conscientious and prepared, engaged and engaging, and exhibited an inspired grasp of the material. Her performance in the formal work of the class was simply exceptional. She was also quite adept at answering, and asking, important questions throughout the semester, both in class and outside of it, which revealed not just her ability to comprehend the information she was learning, but to think beyond it and past it, to explore, creatively, the ways in which even such a subject as civil procedure can be understood for the power it possesses to further the ends of social justice. Her skills and success in the semester are exceeded only by her willingness to keep working as she entered her second semester. Indeed, after the conclusion of the fall semester, Alicia reached out to me to learn how she could improve in the future, which is fairly hard to do when she received the highest grade I could award!

In this second year of her law school experience, it was Alicia's performance in Federal Civil Procedure that earned her a spot as one of my three teaching assistants for the class last semester. In this role, she worked with students to help them understand the doctrine and generally get them acclimated to life in law school. Her wonderful, warm, and welcoming personality put the students

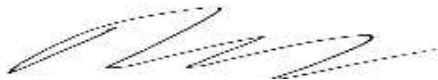
at ease immediately, helping them to feel comfortable with the discomfort that many of them experience in their first semester in law school, which is no small task. And she did this while winning not just one school-wide competition, but two (for both client counseling and appellate advocacy), which is the first time that has happened in Albany Law School's long history.

While Ms. Johnson certainly exhibits the intelligence and technical skills to excel in her education and, later, her career, she is also dedicated, diligent, conscientious and kind. She is well-respected by her peers and a clear leader among them. Notably, with some of the recent, high-profile incidents of law enforcement interactions with members of the African-American community, she has been a passionate, patient, and thoughtful voice helping our entire law school community come to grips and address some of the issues these interactions have exposed.

As a former law clerk myself to a federal judge, serving the late Constance Baker Motley, I have no doubt in my mind that Ms. Johnson has what it takes to excel as your clerk. I know also that she will serve with distinction in your chambers should you select her as one of your clerks. It is for these reasons that I support her candidacy wholeheartedly, and without hesitation or reservation.

Thank you for your consideration of these thoughts on the candidacy of Ms. Johnson to serve as one of your law clerks. If I can be of any further assistance to you, please do not hesitate to reach out to me at 518-445-3247 or via email at [rbres@albanylaw.edu](mailto:rbres@albanylaw.edu).

Best,

A handwritten signature in black ink, appearing to read 'Ray Brescia', with a stylized, flowing script.

Ray Brescia

August 24, 2020

The Honorable Elizabeth Hanes  
Spottswood W. Robinson III & Robert R. Merhige, Jr.  
U.S. Courthouse  
701 East Broad Street, 5th Floor  
Richmond, VA 23219

Dear Judge Hanes:

It is with great pleasure that I write to recommend Alicia Johnson for a clerkship position with your chambers. Alicia is a special student. She is smart, intellectually curious, and extremely diligent. She has excelled by every measure. I believe that she would be an excellent addition to your team, and I support her candidacy wholeheartedly and without reservation.

I have been fortunate enough to have Alicia in three classes thus far—namely, contracts (a full-year course at Albany Law School); my financial crimes/financial market regulation seminar; and business organizations. Alicia was a top performer in each of these classes, earning grades of A/A-. She was a frequent and thoughtful contributor to class discussion as well. Put simply, she was a pleasure to have as a student.

I offer an anecdote from last week to give you a sense of Alicia's intellectual rigor and curiosity. Alicia took my very challenging business organizations final last week. A couple of days before the final, Alicia sent me a list questions about stock buybacks. I had mentioned stock buybacks in passing in a couple of our classes, but they had not been a focus. But because Alicia had seen some questions and commentary in the press, she wanted to be sure she understood what stock buybacks are, how they work, and why they have been the subject of recent controversy. I provided a few quick answers to her questions, and forwarded a few articles. Within the hour, Alicia had read the materials and composed a new set of questions for me. Not every student reaches out to their professors in this fashion—especially not when preparing for the final exam. But this is exactly what Alicia did, and it is typical for her: Alicia wants to know how things work, not just for the exam, but for her future practice. I was not surprised to see Alicia digest these materials so quickly, and then still find the time to ace the business organizations final.

It is worth noting that Alicia has excelled academically and with regard to co-curricular and extra-curricular projects. For example, Alicia (with her teammate) won both the Donna Jo Morse Client Counseling Competition and the Domenick L. Gabrielli Appellate Advocacy Competition, a truly noteworthy achievement. Alicia also has substantial journal responsibilities, serving as Executive Editor for Notes & Comments for the Albany Law Review. Additionally, Alicia has performed an extraordinary amount of service for our Albany Law School Community. She was named 1L & 2L Member of the Year and Mentor of the Year by the Black Law School Students Association, she has served as a faculty research assistant, and she serves as an ambassador for the admissions office.

With this background in mind, and in light of Alicia's strong academic record, I recommend her wholeheartedly for a position with your chambers. I know you must have many strong candidates, but with Alicia's curiosity, intellectual rigor, drive and record of accomplishment, I hope her name rises to the top of your list.

Best,

Christine Sgarlata Chung

Professor of Law

Albany Law School

cchung@albanylaw.edu

Christine H. Chung - cchung@albanylaw.edu

**Writing Sample**

Enclosed is a judicial order that I drafted for the Hon. Analisa Torres, U.S. District Court Judge for the Southern District of New York. This draft substantially contributed to the final judicial order issued in the case, though this version contains just my unedited work. The names, case numbers, dates, and docketing information have been changed or omitted in order to protect the identity of the defendant.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

JOHN DOE,

Defendant.

USDC SDNY

DOCUMENT

ELECTRONICALLY FILED

DOC #: \_\_\_\_\_

DATE FILED: \_\_\_\_\_

01 Cr. 234

**ORDER**

ANALISA TORRES, District Judge:

On September 3, 2018, a grand jury handed up an indictment (the “Indictment”) charging John Doe (“Defendant”) and Jane Doe with participating in a conspiracy, from at least in or about 2016, up to and including in or about September 2018, to distribute and possess with intent to distribute 280 or more mixtures of “crack” in violation of Title 21, United States Code, Section 841(a)(1). The Indictment further alleges that in furtherance of the conspiracy, Defendant and Ms. Doe knowingly did use and carry firearms in violation of Title 18, United States Code, Section 924(c)(1)(A).

Defendant asked this Court to decide on several motions<sup>1</sup>: (1) defendant’s motion for a bill of particulars; (2) defendant’s motion to preclude uncharged acts, or in the alternative, motion to direct the Government to disclose any and all acts which it would seek to introduce against the defendant; (3) defendant’s motion for the disclosure of exculpatory evidence pursuant to *Brady v. Maryland* and its progeny; and (4) defendant’s motion for the Government to

<sup>1</sup> Defendant’s motion also asked to sever the trial between himself and Ms. Doe. However, Ms. Doe pled guilty in May 2019.



disclose any statements made by an alleged co-conspirator which the Government intends to introduce at trial.

For the foregoing reasons, all of Defendant's motions are DENIED.

## DISCUSSION

### I. Bill of Particulars

Defendant asks the Court to grant him a Bill of Particulars pursuant to Federal Rules of Criminal Procedure Rule 14.

#### A. Legal Standard

Rule 7(f) of the Federal Rules of Criminal Procedure allows a defendant to request a bill of particulars in order to identify with sufficient particularity the nature of the charge pending against him or her, thereby enabling the defendant to prepare for trial, to prevent surprise, and to interpose a plea of double jeopardy should he or she be prosecuted a second time for the same offense. *U.S. v. Bortnovsky*, 820 F.2d 572, 574 (2d Cir. 1987). *See also Wong Tai v. U.S.*, 273 U.S. 77 (1927). The decision whether or not to grant a bill of particulars rests within the sound discretion of the district court. *U.S. v. Panza*, 750 F.2d 1141, 1148 (2d Cir. 1984). "That discretion must be informed, however, by certain well-established considerations: whether the requested particularization is necessary to a defendant's preparations for trial and to the avoidance of unfair surprise at trial." *United States v. Payden*, 613 F. Supp. 800, 816 (S.D.N.Y. 1985). It is not enough that the information would be useful to the defendant; if the defendant has been given adequate notice of the charges against him or her, the government is not required to disclose additional details about its case. *Id.* The court must be cognizant of the fact that a bill of particulars confines the government's evidence at trial to the particulars furnished. *Id.*

Usually, when the information that the defendant is seeking is provided in the indictment or in another acceptable alternate form, a bill of particulars is not required. *Bortnovsky*, 820 F.2d at 574. The proper scope and function of a bill of particulars is to furnish facts, supplemental to those contained in the indictment. *Id.* A bill of particulars should be required only where the charges of the indictment are so general that they do not advise the defendant of the specific acts of which he or she is accused. *United States v. Feola*, 651 F. Supp. 1068, 1132 (S.D.N.Y. 1987), *aff'd*, 875 F.2d 857 (2d Cir. 1989).

#### B. Application

In this case, Defendant seeks a bill of particulars that addresses the following items: (a) the conduct or acts of the defendant that constitute his engagement in the furtherance of the charged conspiracy; (b) the identity of the co-conspirators with whom he is alleged to have performed any such acts or conduct; (c) the extent of the conspiracy and the agreement and the object of the conspiracy; (d) the dates and locations of any meetings or conversations in which it is alleged that a conspiratorial agreement was made in which the defendant joined; (e) the specific dates and locations of any acts in furtherance of the conspiracy performed by the defendant and the description of the acts; (f) the identity of all others known, but not named, in the Indictment with whom the defendant allegedly conspired; and (g) the dates in which the conspiracy began and ended so that a determination can be made of the value of statements made in the furtherance of the conspiracy. Def. Mem. at 15.

Even though the Government here provided discovery to Defendant, he asserts that “the mass disclosure does little to apprise the defen[dant] of the particularized information regarding the offense with which he is charged . . . .” Def. Mem. at 14. The defense further asserts that the Second Circuit “has made it clear that the prosecution does not fulfill its obligation merely by

providing mountains of documents to defense counsel who were left unguided.” Def. Mem. at 14 (citing *Bortnovsky*, 820 F.2d at 575). He also contends that he will be left to sift through discovery in a “needle in a haystack” fashion for information that is relevant to his conduct in the charged conspiracy. *Id.*

The argument by the defense is unpersuasive. *Bortnovsky* is distinguishable from the current case because it centered on the Government’s need to identify which of the defendant’s insurance claims for burglary losses were fraudulent and which of the many invoices submitted to substantiate the claims were actually false. “Nowhere in the indictment [did] the Government specify the dates of the staged burglaries or enumerate which of [the] numerous documents were falsified.” *Bortnovsky*, 820 F.2d at 574. This led to the defendants there having to explain the events surrounding eight actual burglaries and to confront numerous documents unrelated to the charges pending. *Id.* at 575. As the *Bortnovsky* court found: “In effect, the burden of proof impermissibly was shifted to the [defendants]” and “the relevance of key events was shrouded in mystery at the commencement of and throughout the trial.” *Id.* That is not the situation in this case.

The defense’s motion essentially seeks complete discovery of the Government’s case in reference to the overt acts and calls for too much details of evidence. *See Wong Tai*, 273 U.S. at 302. The charges before the defendant are conspiracy to possess and distribute “crack” and possession plus use of a firearm in furtherance of that conspiracy. There is no mystery as to the nature of the charges against Defendant so that he may prepare an adequate defense at trial. *See Bortnovsky*, 820 F.2d at 575. The extensive and detailed information the Government has provided to the defendant satisfies its burden here.

Furthermore, “the Government need not, when charging conspiracy, set out with precision each and every act committed by the conspirators in the furtherance of the conspiracy.” *U.S. v. Cohen*, 518 F.2d 727, 733 (2d Cir. 1975). A defendant does not need to know the means by which it is claimed he or she performed acts in furtherance of the conspiracy nor the evidence which the Government intends to adduce to prove his or her criminal acts. *Feola*, 651 F. Supp at 1132. Nor is the defendant entitled to receive, by way of a bill of particulars, all documents which would in any way tend to verify the meetings or activities described in the overt acts; the exact time and place of each overt act in the indictment; the names and addresses of persons present during the meetings described therein; nor information regarding all meetings at which the defendant was present. *Id.* at 1133.

In addition, according to the Government, it has made several disclosures to Defendant’s counsel and its representatives have made themselves available through telephone and e-mail. Gov’t. Mem. at 10. The Government has answered questions regarding particular aspects of the evidence produced in discovery. According to the Government’s memorandum in opposition to the instant motion: “In some instances, the Government has even identified specific documents in response to defense counsel’s requests for particular information, has identified surveillance video that shows [defendant] doing shootings, and has identified specific prison calls for defense counsel’s attention.” Gov’t. Mem. at 10.

Accordingly, the motion for a bill of particulars is DENIED.

## II. Motion to Disclose Uncharged Acts

Defendant also asks the Court to grant an Order directing the Government to early disclosure of any and all acts which the Government would seek to introduce against the

Defendant so that the he may make a 404(b) motion to preclude the introduction of such evidence.

A. Legal Standard

Rule 404(b) states that the Government is prohibited from admitting evidence of a crime, wrong, or other act to prove a person's character in order to show that on a particular occasion the person acted in accordance with that character. Fed. R. Evid. 404(b)(1). However, this evidence may be admissible to show, *inter alia*, motive, opportunity, knowledge, and preparation. Fed. R. Evid. 404(b)(2). The Government need only provide a reasonable notice of the general nature of such evidence that the prosecutor intends to offer at trial, and must do so before trial. *Id.* Rule 404(b), however, sets no minimum time for action by the government in this request, nor would any time limit be appropriate, since the evidence the government wishes to offer may well change as the proof and possible defenses crystallize. *United States v. Matos-Peralta*, 691 F. Supp. 780, 791 (S.D.N.Y. 1988).

B. Application

In the instant case, Defendant seeks an order directing the Government to disclose to the Defendant any and all acts for which the Government would seek to introduce against the Defendant pursuant to Federal Rule of Evidence Rule 404(b) in such sufficient and reasonable time that the Defendant may make a 404(b) motion to preclude the introduction of such evidence. Def. Mem. at 2. Unfortunately, Defendant does not set a specific date or time frame by which he would like these details disclosed by the Government. Defendant also fails to make a showing that the relief he seeks is urgent at this time.

The Government responds that it will continue to provide notice of any Rule 404(b) evidence in a reasonable time frame prior to trial. Gov't. Mem. at 12. In fact, it has already given Defendant's counsel a rap sheet detailing the Defendant's past arrests and convictions which they may intend to introduce at trial. *Id.* In addition, this Court will establish a reasonable and early time frame for all pre-trial disclosures including those relating to any possible Rule 404(b) evidence. This will give Defendant enough time to make any subsequent motions regarding the introduction of such evidence.

In the alternative, Defendant asks to preclude the Government from offering this type of evidence at trial. Def. Mem. at 2. This motion is premature as the defense does not specify which uncharged crimes or bad acts he would like to exclude.

Accordingly, the motion for early disclosure of uncharged acts is DENIED.

### III. Motion for Brady Material

Defendant also asks the Court for an Order granting disclosure of all material tending to exculpate the Defendant, as well as material that would substantially impeach the credibility of Government witnesses.

#### A. Legal Standard

Pursuant to the Due Process Clause of the U.S. Constitution, the Government has a duty to disclose all favorable information to the defendant that is material either to guilt or punishment. *Brady v. Maryland*, 373 U.S. 83, 87 (1963). This requirement includes evidence solely in the possession of investigating officers, *see Kyles v. Whitley*, 514 U.S. 419 (1995), and evidence that can be used to impeach the credibility of a Government witness, *see Giglio v. United States*, 405 U.S. 150, 154 (1972). Any *Brady* and *Giglio* material must be provided by

the Government to the defendant “in time for its effective use at trial.” *U.S. v. Coppa*, 267 F.3d 132, 146 (2d Cir. 2001).

B. Application

Defendant seeks for an Order directing the Government to disclose: (1) any contradictory or inconsistent statements made to any law enforcement personnel or prosecutors by any individual, regardless of whether the Government intends to call those individuals in its direct case; (2) any evidence that would tend to inculcate someone other than the defendant in the count with which he is charged in the Indictment; and (3) any evidence which is inconsistent with the theory of the Government’s case, as set forth in the Indictment, as it pertains to the role or activity of the Defendant. Def. Mem. at 17. Defendant further seeks the production of any inconsistent statements of confidential informants or cooperators and other evidence that might raise questions concerning the reliability or integrity of the informant/cooperator. *Id.* at 19.

The Government responds that it “recognizes [its] continuing obligation to disclose all *Brady* and *Kyles* material, and to make a diligent search for any relevant material that may be in the possession of . . . investigating agents and officers.” Gov’t. Mem. at 13.

The Court finds that the Government has made a good-faith representation that it will provide timely disclosure if any *Brady* material comes to light. *See United States v. Perez*, 940 F. Supp. 540, 553 (S.D.N.Y. 1996) (denying defense request that Government provide early disclosure of *Brady* material because they acknowledged their continuing obligation to provide such material upon its discovery and assured the Court that they would comply with that obligation).

Accordingly, the motion is DENIED.

#### IV. Motion for Disclosure of statements of Co-Conspirators

Defendant asks the Court for an Order for the Government to disclose statements of co-conspirators.

##### A. Legal Standard

The Jencks Act, 18 U.S.C. § 3500, covers disclosures of statements or reports made by Government witnesses. The rule mandates that no statement or report in the possession of the U.S. that was made by a Government witness shall be the subject of subpoena, discovery, or inspection until that witness has testified on direct examination in the trial of a case. 18 U.S.C. § 3500(a). After a witness has testified, the defense can make a motion for the Government to produce any statement of the witness that it has in its possession that relates to his or her testimony. District courts do not have the statutory authority to compel disclosure of prospective witness statements prior to trial. *See U.S. v. Percevault*, 490 F.2d 126, 129 (2d Cir. 1974).

##### B. Application

Defendant seeks an order for the Government to disclose any statements by an alleged co-conspirator which the Government intends to introduce at trial pursuant to Federal Rule of Evidence 801(d)(2)(E). However, the statements of a co-conspirator fall under the Jencks Act when the Government intends to call such individual as a witness at trial. The Government has stated that it intends to make Jencks Act material available to the defense “at a sufficient time before trial for the defense to make effective use of such material.” Govt. Mem. at 14. This Court does not have the authority to compel pre-trial disclosure of the witness statements. *See Coppa*, 267 F.3d at 146.



Accordingly, Defendant's motion that seeks pre-trial disclosure of statements of any co-conspirators the Government wishes to call as witnesses at the trial in this action is also DENIED.

**CONCLUSION**

For the reasons stated above, Defendants' motions are DENIED. The Clerk of Court is directed to terminate the motion at ECF No.0.

SO ORDERED.

Dated:  
New York, New York

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ANALISA TORRES  
United States District Judge

**Applicant Details**

First Name **David**  
 Last Name **Johnson**  
 Citizenship Status **U. S. Citizen**  
 Email Address [dj9433a@student.american.edu](mailto:dj9433a@student.american.edu)  
 Address

**Address**  
**Street**  
**401 Bridge Street, Apt. 215**  
**City**  
**Danville**  
**State/Territory**  
**Virginia**  
**Zip**  
**24541**  
**Country**  
**United States**

Contact Phone Number **423-582-1482**

**Applicant Education**

BA/BS From **Virginia Polytechnic Institute and State University**  
 Date of BA/BS **May 2011**  
 JD/LLB From **American University, Washington College of Law**  
[http://www.nalplawsonline.org/ndlsdir\\_search\\_results.asp?lscd=50901&yr=2010](http://www.nalplawsonline.org/ndlsdir_search_results.asp?lscd=50901&yr=2010)  
 Date of JD/LLB **May 23, 2021**  
 Class Rank **33%**  
 Does the law school have a Law Review/Journal? **Yes**  
 Law Review/Journal **No**  
 Moot Court Experience **No**

## Bar Admission

## Prior Judicial Experience

Judicial  
Internships/        **No**  
Externships  
Post-graduate  
Judicial Law       **Yes**  
Clerk

## Specialized Work Experience

## Recommenders

Snyder, David  
dsnyder@wcl.american.edu  
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## References

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Professor David Snyder  
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dsnyder@wcl.american.edu

Colin Ross  
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colin.ross@usdoj.gov

**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

September 03, 2020

The Honorable Elizabeth Hanes  
Spottswood W. Robinson III & Robert R. Merhige,  
Jr., U.S. Courthouse  
701 East Broad Street, 5th Floor  
Richmond, VA 23219

Dear Judge Hanes:

I am a third-year law student at American University Washington College of Law applying for a Term Law Clerk position for the 2021-2023 period. I believe I would excel in your chambers because, even though I had an initial failure when completing my undergraduate degree, I have since learned from my failure, gained considerable work experience, and developed a strong passion for service.

I did not do well during my undergraduate studies and barely graduated. The primary reason why I did not succeed was because I was unfocused and wanted to be out in the real world. I paid for the failure and it weighed on me. However, I have since learned from my mistake and turned it into motivation for my future successes.

I was able to turn over a new page when I enlisted in the U.S. Army as a Human Intelligence Collector. My experience has enabled me to go through documents and other sources of information thoroughly and give a detailed analysis, through reports and briefings, to my commanders and supervisors. I conducted this work while deployed to austere environments in Africa two separate times to support Special Forces teams I was attached to. This process has prepared me to work on a short-notice and stressful legal project with constant communication whenever needed, meaning I am prepared to work long nights and weekends for you.

I knew I wanted to continue serving the nation after I left the Army, and I remembered from my deployments the instability that occurs in countries when a government cannot provide justice to its people. Therefore, I decided to pursue a law degree to help provide that justice here in the United States. Luckily, I had shown improvement since my undergraduate days with grades from schools I attended while I was in the Army, so American University accepted me. During my time in law school, I have worked hard and I am now in top third of my class.

Additionally, I have refined my legal analysis skills and gained an enhanced understanding of federal government legal work from interning at the Department of Justice (DOJ), National Security Division, Office of Law and Policy during the Spring 2020 semester, and at the DOJ, Criminal Division, Narcotic and Dangerous Drug Section this past summer.

In addition to my experience, my strong interest in service to the nation, particularly practicing criminal law, renders me eager to learn fast and work hard for you. By serving as a Magistrate Judge, and as an Assistant Federal Public Defender before that, you have surely shown your dedication to service as well. This fuels my drive to perform any task you need done to the best of my ability because I want to learn from you.

What draws me to work in Richmond is that I am from the Hampton Roads area, specifically Portsmouth. I have not returned to Virginia's southeast region since I left for college a decade ago, and I wish to return and give back to the community that I grew up in. Clerking for you would be the perfect opportunity for me to return.

Thank you for the chance to apply for this position, and I look forward to hearing from you.

Respectfully,

David "Dave" Johnson

# David Johnson

6016C Rock Cliff Lane, Alexandria, VA. 22315  
(423) 582-1482 | dj9433a@student.american.edu

## EDUCATION

**American University Washington College of Law and School of International Service**, Washington, D.C.  
*Juris Doctor* candidate, May 2021, GPA 3.48; *Master of Arts* candidate, December 2021, GPA 4.0  
Activities: National Security Law Brief, Managing Editor; Civil-Military Society, Engagement Director

**Defense Language Institute – Foreign Language Center**, Monterey, CA  
Graduate of Basic Modern Arabic Course, December 2014; GPA 3.3

**Cochise College**, Douglas, AZ  
*Associate of Applied Science* in Intelligence Operation Studies, August 2013; GPA 4.0

**Virginia Polytechnic Institute & State University**, Blacksburg, VA  
*Bachelor of Arts* in Political Science, May 2011; GPA 2.6  
Activities: Virginia Tech Corps of Cadets, Company Executive Officer; Political Science Club, Member; Model UN, Member; Cigar Club, Member.

## EXPERIENCE

**Department of Justice**, Criminal Division, Narcotic and Dangerous Drug Section, Washington, D.C.  
*Volunteer Legal Intern*, June 2020-August 2020

- Conducted legal research on and draft memoranda analyzing criminal law and procedure for cases that dealt with violations of federal narcotic regulations and/or federal anti-trafficking laws.
- Analyzed and wrote summaries of evidence to help guide attorneys on how to approach a case.

**Department of Justice**, National Security Division, Office of Law and Policy, Washington, D.C.  
*Volunteer Legal Intern*, January 2020-April 2020

- Conducted legal research on and drafted memoranda analyzing national security issues.
- Helped to write and edit Congressional testimony, issue papers, and a monograph.
- Observed interagency coordination meetings.

**Washington College of Law**, War Crimes Research Office, Washington, D.C.  
*Dean's Fellow for Afghanistan Documentation Project*, July 2019-August 2019

- Read various public reports on possible violations of International Humanitarian Law (IHL) in Afghanistan from 1979 through the present.
- Entered specific possible violations of IHL from reports into a database for use by researchers.
- Coded datapoints for database inputs.

**BAE Systems**, McLean, VA  
*Senior FMV Analyst*, April 2018-August 2018

- Exploited various types of imagery supporting counterterrorism operations in a round-the-clock work environment.
- Compiled imagery and wrote reports for use in briefings to government officials.

**United States Army**, Headquarters Support Company, 2nd Battalion, 3rd Special Forces Group (A)  
*Strategic Debriefing and Human Intelligence Collector*, January 2013-April 2018  
Rank: Specialist/E-4

- Collected and reported intelligence in Africa to support Special Forces teams.
- Conducted interviews with various personnel for reports.
- Analyzed and integrated Human Intelligence reporting with All-Source and Signals Intelligence analyses.

# David Johnson

6016C Rock Cliff Lane, Alexandria, VA. 22315  
(423) 582-1482 | dj9433a@student.american.edu

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## ADDITIONAL INFORMATION

**Language Skills:** Modern Standard Arabic (intermediate proficiency); French (elementary proficiency).

**Clearance:** TS/SCI re-granted 12/2019; CI/Polygraph conducted 05/2016.

**David Johnson**  
**American University, Washington College of Law**  
**Cumulative GPA: 3.48**

**Fall 2018**

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Torts	Amanda Leiter	A-	4	
Research & Writing I	David Spratt	B+	2	
Contracts	David Snyder	B+	4	
Civil Procedure	Lewis Grossman	B+	4	

**Spring 2019**

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Property	Jonas Anderson	A	4	
Research & Writing II	David Spratt	B	2	
International Business Transactions	Susan Franck	B+	3	
Criminal Law	Elizabeth Boals	A-	3	
Constitutional Law	Mark Niles	B-	4	

**Summer 2019**

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
International Criminal Law: Accountability	Susana SaCouto	A-	3	
International Legal Approaches to Terrorism	Jayesh Raythod	A-	3	

**Fall 2019**

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Legal Drafting: International Contracts	J. Michael Cavanaugh	A	2	
Criminal Procedure I	Andrew Ferguson	A-	3	
Business Associations	Walter Effross	B	4	
Evidence	Elizabeth Boals	A	4	

**Spring 2020**

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Supervised Externship Fieldwork	Christiane Sorel	P	4	
Supervised Externship Seminar	Christiane Sorel	P	2	
Secured Transactions	David Snyder	P	4	
Legal Ethics	Jonathan Lawlor	P	2	

Due to COVID-19, the school elected to make all classes for the semester graded on a Pass/Fail scale.

**Grading System Description**

A = 4.0

A- = 3.7

B+ = 3.3

B = 3.0

B- = 2.7

C+ = 2.3

C = 2.0

D = 1.0



**David Johnson**  
**Virginia Polytechnic Institute and State University**  
**Cumulative GPA: 2.61**

**Fall 2007**

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Foundations of Physics I		D+	4	
General Chemistry Lab I		B	1	
Military Leadership Practicum		P	1	
General Chemistry I		B	3	
AFROTC Leadership Laboratory		P	1	
Calculus		C-	3	
Introduction to the Air Force		A-	1	
Elementary Linear Algebra		B+	2	

**Spring 2008**

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Intro to Differential Equations		C	3	
General Chemistry Lab II		B	1	
Foundations of Physics		B	4	
General Chemistry II		A-	3	
AFROTC Leadership Laboratory		P	1	
Freshman English		D+	3	
Introduction to the Air Force		B-	1	
Military Leadership Practicum		P	1	

**Fall 2008**

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Foundations of Physics I		A	4	
Leadership & Management Ethics		B+	3	
Introduction to Naval Science		A	3	
Military Leadership Practicum		P	1	
Multivariable Calculus		W	3	

**Spring 2008**

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Seapower and Maritime Affairs		A	3	
Military Leadership Practicum		P	1	
Engineering Cultures		B	3	

Intro to Political Theory	C	3
History of the Modern World	B+	3
Comparative Government & Politics	B	3
Research Methods	C+	3

**Fall 2009**

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Introduction to World Politics		A	3	
Evolution of Warfare		A	3	
Military Leadership Practicum		P	1	
U.S. South		B	3	
Political Theory		B-	3	
Introduction to Theatre		C+	3	

**Spring 2010**

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Military Leadership Practicum		P	1	
Public Speaking		W	3	
The Presidency		B	3	
International Relations I		B-	3	
Administrative Law and Policy		C+	3	
International Relations II		B+	3	
American Revolution		B	3	

**Fall 2010**

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Latin American Politics		C	3	
Political Communication		C-	3	
Morality and Justice		F	3	
Constitutional Law Structures and Relations		F	3	
Leading in Your Profession		A	1	
The Vietnam War		A	3	

**Spring 2011**

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Modern Military History		B	3	
Global Environmental Issues		C	3	
Leading in Your Profession		A	1	

The CIA Organization, Functions, and Capabilities	F	3
Introductory Sociology	D-	3
Brewing Science and Technology	B+	3
Wines and Vines	C+	3

**Grading System Description**

A = 4.0 P=Pass/F=Fail

A- = 3.7 W=Withdrawal

B+ = 3.3

B = 3.0

B- = 2.7

C+ = 2.3

C = 2.0

D = 1.0

**David Johnson**  
**American University, School of International Service**  
**Cumulative GPA: 4.0**

**Fall 2019**

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Foreign Policy: Theories of Decision Making	Shoon Murray	A	3	

**Spring 2020**

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
U.S. Counterterrorism Policy	Stephen Tinkel	A	3	

With COVID-19, the graduate program allowed students to change one graded class to a Pass/Fail option. However, I elected not to change how this course was graded.

**Grading System Description**

A = 4.0  
A- = 3.7  
B+ = 3.3  
B = 3.0  
B- = 2.7  
C+ = 2.3  
C = 2.0  
D = 1.0

**David Johnson**  
**Defense Language Institute**  
**Cumulative GPA: 3.3**

**August 2013-December 2014**

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Hist and Geo of the AD Region		A-	2	
Advanced Arabic II		B+	4	
Intro to Military Topics in Arabic		B	2	
Elementary Arabic Conversation		A-	3	
Arabic Area/Cultural Studies		A-	2	
Intro to Job Related Skills in AD		B	2	
Intermediate Arabic II		B+	4	
Advanced Arabic I		B+	4	
Elementary Arabic II		B+	4	
Comprehensive Military Topics in AD		B-	2	
Intro to Arabic Culture		A-	2	
Elementary Arabic I		B-	4	
Intermediate Arabic Conversation		A-	3	
Intermediate Arabic I		B+	4	
Advanced Arabic Conversation		A-	3	

**Grading System Description**

A = 4.0  
A- = 3.7  
B+ = 3.3  
B = 3.0  
B- = 2.7  
C+ = 2.3  
C = 2.0  
D = 1.0

**David Johnson**  
**Cochise College**  
**Cumulative GPA: 4.0**

**Summer 2013**

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Intro to Intel Ops Studies		A	3	
Interrogation/Interview Tech II		A	3	
Map Reading and Analysis		A	3	
Collection Operations		A	3	
Briefing Skills		A	1	
Intel Law and Admin of Justice		A	1	
Reporting of Intel Data II		A	3	
Reporting of Intelligence Data		A	3	
Info Sec for Intel Operations		A	1	
Interrogation Operations		A	3	
Interrogation Interview Tech		A	3	

**Grading System Description**

A = 4.0  
A- = 3.7  
B+ = 3.3  
B = 3.0  
B- = 2.7  
C+ = 2.3  
C = 2.0  
D = 1.0

August 21, 2020

The Honorable Elizabeth Hanes  
Spottswood W. Robinson III & Robert R. Merhige, Jr.  
U.S. Courthouse  
701 East Broad Street, 5th Floor  
Richmond, VA 23219

Dear Judge Hanes:

I am writing to provide a strong recommendation for Dave Johnson. He was a student in two of my classes, Contracts and Secured Transactions. He did well in both, and particularly so in Secured Transactions despite having to deal with very serious adversity when he was taking the course. During his time in law school I have seen him progress from being quite good to truly outstanding. These are the reasons I recommend him so strongly.

I first got to know Mr. Johnson when he was a first year student in Contracts. He was among a group of other military and former military students. He and his colleagues worked hard, engaged with the material, and for the most part did well. Mr. Johnson certainly did well, earning a "B+" (which to me means something along the lines of "very good"). I take recommendations seriously, and for academically competitive jobs, I require at least a "B+" to provide a recommendation. But this was only the beginning; it reflects where Mr. Johnson was when he started law school after about five years in the Army.

You can see from his transcript that he was generally in the B+ range during his first year. At the beginning of his second year, he was already moving up, earning many straight "A" grades, including in particularly demanding courses like Evidence. I had Mr. Johnson again in the spring of his second year for Secured Transactions, which is another demanding course. Throughout the course he was among the best students in class, both in person and later online (because of covid-19). Although by law school rule his transcript shows only a "P" and I am not permitted to disclose his actual grade (although I did grade the exams in the usual way), I can say that his exam performance was truly excellent, and like his class participation, put him among the top students in a large class of about 60-70 students. This even though he was dealing not only with the disruption of covid-19, like everyone, but the loss of a close relative.

If I were looking to hire a new lawyer, Dave Johnson would surely be near the top of my list. I am happy to give him this strong, enthusiastic recommendation, and I am happy to provide any further information that I can. Please feel free to get in touch.

Yours very truly,

David V. Snyder  
Professor of Law  
Director, Business Law Program

David Snyder - dsnyder@wcl.american.edu - 202-274-4238

August 21, 2020

The Honorable Elizabeth Hanes  
Spottswood W. Robinson III & Robert R. Merhige, Jr.  
U.S. Courthouse  
701 East Broad Street, 5th Floor  
Richmond, VA 23219

Dear Judge Hanes:

I write this recommendation on behalf of Mr. David ("Dave") Johnson. Dave is energetic, enthusiastic, organized, and committed to task completion. His work ethic, interpersonal relations, past work experience in and out of the United States Army, and legal skills make him a perfect, hard-to-pass-up candidate for a law clerk position.

During his 1L year in 2018-2019, Dave was a student in my Legal Rhetoric/Introduction to Advocacy class at American University, Washington College of Law. Legal Rhetoric is a writing, research, and citation class in which students learn to write various types of interoffice documents during the fall semester and motion memos and briefs during the spring semester. As you are aware, legal writing differs dramatically from undergraduate writing. Most students have a moderately difficult time making the transition to a more analytical and structured style. Dave, however, was a frequent volunteer in class; his comments and questions showed a complete grasp of the course material, which he often explained to others. Never content to be an average student, Dave regularly came to my office hours, as he continued to challenge himself to be a better legal writer. He received a B+ first semester and a B second semester (his grade second semester went down because the major assignment is a partnered assignment, and Dave's partner was not as strong a student as Dave was). Dave also received a Certificate of Excellence on the Legal Rhetoric Research, Citation, and Writing Strategy Exam, placing him as one of an elite number of students that received 95% or above on the exam.

Unlike the traditional doctrinal classes, Legal Rhetoric is a smaller class of 21 students. This smaller setting allows a professor to interact closely with his or her students. Dave is a well-rounded individual--a pleasure to teach. He is humble, friendly, respectful, down-to-earth, and mature, which really sets him apart from the typical law student.

Although I have not seen Dave as often over the last year, each time I do, I am even more and more proud of his accomplishments. His solid legal and advocacy skills and his impressive work experience, before and during law school, make him an excellent fit as a law clerk. Dave wants to be a federal prosecutor, and working in a courtroom as a clerk would give him invaluable experience to help achieve that goal.

No matter his ultimate specialty, Dave has the academic, organizational, and personal skills to succeed. It is with complete confidence that I recommend Dave Johnson to you. Please let me know if I can be of further assistance.

Very truly yours,

David H. Spratt  
Professor of Legal Rhetoric  
Acting Director, Legal Rhetoric Program

THE AMERICAN UNIVERSITY  
WASHINGTON COLLEGE OF LAW

David Spratt - dspratt@wcl.american.edu - 202-274-4059



August 21, 2020

The Honorable Elizabeth Hanes  
Spottswood W. Robinson III & Robert R. Merhige, Jr.  
U.S. Courthouse  
701 East Broad Street, 5th Floor  
Richmond, VA 23219

Dear Judge Hanes:

I write to recommend David Johnson to be a law clerk in your chambers. Mr. Johnson is a top student with an honorable and unusual background, and will be an excellent law clerk. He is smart, thoughtful, highly-motivated, and disciplined. I recommend him without reservation.

Mr. Johnson came to law school after being a United States Army Airborne Special Forces Human Intelligence Officer with several tours in Africa. He served for five years, leading intelligence gathering operations in combat zones and supporting Special Forces missions. He enrolled in the JD/MA program at American University with the goal of working in federal criminal law and national security law.

As a law student, Mr. Johnson demonstrated all of the talents and skills necessary for success. He was a great student in Criminal Procedure, not only smart on the law, but engaged in the deeper issues of the class. He is exactly the type of law graduate I would want as a law clerk. He has all of the requisite strong writing and analytical skills, but he also has a level of interest that will make him a real asset in chambers.

Mr. Johnson has more than taken advantage of the opportunities available to him at the law school. In addition to taking classes for his Masters and his law degree, Mr. Johnson is the articles editor of the National Security Brief and the Engagement Director of the Civil-Military Society. He also worked as a Deans Fellow for the Afghanistan Documentation Project investigating possible violations of international humanitarian law.

In addition to having the legal skills to succeed as a law clerk, Mr. Johnson has developed the professional experience to thrive in a courthouse setting. Unlike some students, Mr. Johnson brings a mature level of professional skill to his legal studies. In addition to his human intelligence work with the Special Forces, Mr. Johnson has also worked in the civilian defense space for BAE Industries. In both capacities, he learned about the importance of discipline and hard work. He is a responsible and committed professional who understands the seriousness of legal tasks and responsibilities. He will bring that experience with him as a law clerk, adding depth, context, and understanding to his work.

Finally, Mr. Johnson has the character necessary to be an exceptional clerk. I believe trust, competence, and carefulness are three qualities essential for a law clerk. Mr. Johnson embodies those qualities. He is responsible, organized, respectful, and analytically sharp. He writes well. He cares about law as part of a duty to public service and wishes to begin his legal career as a law clerk.

Please let me know if you need further information (202-274-6282 or [ferguson@wcl.american.edu](mailto:ferguson@wcl.american.edu)). Thank you.

Sincerely,

AGF

Andrew Guthrie Ferguson

Ferguson Andrew - [ferguson@wcl.american.edu](mailto:ferguson@wcl.american.edu)

# David Johnson

6016C Rock Cliff Lane, Alexandria, VA. 22315  
(423) 582-1482 | dj9433a@student.american.edu

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## WRITING SAMPLE

The attached writing sample is the first memorandum I submitted during my Summer 2020 internship at the Department of Justice (DOJ), Criminal Division, Narcotic and Dangerous Drug Section (NDDS). After a series of proffered meetings, a defendant signed a Statement of Facts that would be the basis of their guilty plea. Later, the defendant did not surrender to authorities pursuant to their plea agreement, so one of the NDDS trial attorneys requested to bring charges against the defendant. One of the trial attorney's concerns was that the defendant would object to the use of the signed Statement of Facts as evidence against them; therefore, he asked me to write a memorandum on the admissibility of the Statement of Facts.

Due to sensitive nature of the work performed by NDDS, all interns must sanitize anything they intend to use for a writing sample and submit the sanitized sample for review by NDDS. Because of this requirement, I made the following changes: I do not use the names of any person; I use Defendant and gender-neutral pronouns to refer to the defendant; beyond referring to Arizona, I do not specify locations; and I do not list any dates. This sample was approved by my direct supervisor and the attorney who requested the memorandum.

**Memorandum on the Use of Statement of Facts as Evidence Against Defendant in the District of Arizona.**

This memorandum explains that the Statement of Facts executed by Defendant on Date 5 is more than likely admissible as evidence, despite Defendant's potential challenges, for the proposed two-count Indictment against Defendant for 1) conspiracy to manufacture and distribute methamphetamine ("meth") knowing, intending, and having reasonable cause to believe that the controlled substance would be illegally imported into the United States, in violation of Title 21, United States Code, Sections 959(a), 960(b)(1)(H), and 963, and 2) conspiracy to import methamphetamine into the United States, in violation of Title 21, United States Code, Sections 952, 960(b)(1)(H), and 963. As detailed below, Defendant signed the Statement of Facts during the last meeting in a series of proffered meetings between Defendant, their attorney, Federal Bureau of Investigation ("FBI") agents, Drug Enforcement Administration ("DEA") agents, and Narcotic and Dangerous Drug Section ("NDDS") attorneys.

**I. Overview of Indictment and Statement of Facts**

During an investigation into a large-scale drug trafficking organization ("DTO") subgroup, an FBI agent and a DEA agent met with Defendant in City 1, Arizona on Date 1. The agents advised Defendant that the Defendant was there voluntarily and was not being placed into custody. Defendant remained and provided the agents with information on the activities of and communications between the members of this DTO subgroup, incriminating themselves. The agents advised Defendant to retain an American lawyer, and Defendant later hired Attorney A.

After Defendant hired Attorney A, NDDS informed Attorney A that their client faced criminal liability and that it was in Defendant's best interest to meet and potentially cooperate with the government. Afterwards, NDDS proffered Defendant on Dates 2, 3, and 4 pursuant to a

Proffer Agreement Defendant signed on Date 2, with Defendant signing a sheet at each of the subsequent meetings stating the Proffer Agreement was still in effect.

During the Date 4 meeting, Defendant agreed to plead guilty to an information and self-surrender. At the beginning of a meeting on Date 5 between Defendant, Attorney A, FBI and DEA agents, and NDDS attorneys, Defendant reviewed a Statement of Facts that would serve as the basis for Defendant's guilty plea by summarizing their involvement in a conspiracy to distribute meth from approximately 20XX until 20XX. NDDS Trial Attorney B explained that the Proffer Agreement did not cover the Statement of Facts and that if Defendant did not self-surrender at the time deemed appropriate by the government, the Statement would be used against Defendant in the government's case-in-chief. Defendant indicated that they understood, and Defendant and Attorney A signed the Statement of Facts.

Defendant was scheduled to surrender Date 6 but failed to appear citing safety concerns for their family. The U.S. government is now requesting permission to indict Defendant and plans to use the Statement of Facts as evidence.

## **II. Statement of Facts Admission**

### **A. Primary Challenge**

Defendant might challenge the admission of the Statement of Facts because they signed the Statement during a proffered meeting, and paragraph 6 of the NDDS Proffer Agreement states "no understandings, promises, or agreements have been entered into with respect to the Meeting other than those set forth in this agreement, and none will be entered into unless memorialized in writing and signed by all parties." The complete cooperation plea agreement that the Statement of Facts was part of was not written.

The government will likely prevail because: 1) the proffer agreement is ambiguous as to whether it would apply to a signed Statement of Facts at all, as paragraph 5 states that the agreement “does not apply to any other information provided at the Meeting,” 2) the Statement of Facts was part of a separate agreement from the original Proffer Agreement; 3) even if the Statement of Facts is not found to be part of a separate agreement, the Statement was made as part of a modification to the Proffer Agreement that Defendant violated.

**B. Reasons the Statement of Facts is Admissible**

**i. Statement of Facts is “Other Information”**

Paragraph 5 states that the agreement “is limited to the statements made by Client at the Meeting and does not apply to any oral, written, or recorded statements made by Client at any other time or to any other information provided at the Meeting.” Signing a statement of facts—and being clearly informed that the Statement of Facts is not covered by the Proffer Agreement—would likely constitute “other information provided at the Meeting.” The signed Statement of Facts was never intended to be protected by the Proffer Agreement; rather, it was intended to be “other information” that would form the basis of Defendant’s guilty plea.

**ii. Statement of Facts is Part of a Separate Agreement**

Paragraph 1 of the Proffer Agreement states that the Proffer Agreement is not a cooperation, plea, or non-prosecution agreement. At the Date 4 proffered meeting, Defendant, who had initialed a sheet indicating that the Proffer Agreement was still in effect for this meeting, agreed to plead guilty to an information and self-surrender. By initialing the Proffer Agreement sheet, Defendant indicated that they understood that the cooperation plea agreement would not be covered by the Proffer Agreement, as stated in paragraph 1. Defendant also indicated that they understood that pleading guilty was not covered by the Proffer Agreement

when, at the Date 5 meeting, Trial Attorney B explained that the Statement of Facts, the basis of Defendant's guilty plea, would not be covered by the Proffer Agreement.

Defendant's potential challenge, that the separate and complete plea agreement was not memorialized in writing as indicated in Paragraph 6 of the Proffer Agreement, does not have merit. First, proffer agreements, as well as plea agreements, are to be interpreted according to contract principles. *United States v. Chiu*, 109 F.3d 624, 625 (9th Cir. 1997). Under Arizona law, parties to a contract can make a separate agreement from the original contract, even if the original contract required changes to be in writing. *Eng v. Stein*, 599 P.2d 796, 799–800 (Ariz. 1979); *see also Harbor Mech., Inc. v. Arizona Elec. Power Co-op., Inc.*, 496 F. Supp. 681, 686 (D. Ariz. 1980). Therefore, even if paragraph 6 of the Proffer Agreement required any further agreements to be in writing, the government and Defendant were able to make a separate agreement, the cooperation plea agreement, orally. Because the Statement of Facts was part of the cooperation plea agreement, which is separate from the Proffer Agreement, the Statement of Facts should be admissible.

### **iii. Statement of Facts is Part of a Modification to the Proffer Agreement**

Even if the cooperation plea agreement is found not to be a separate agreement from the Proffer Agreement, the cooperation plea agreement was an oral modification to the Proffer Agreement. Arizona law also allows for oral modifications to contracts, even if the original written contract was intended to express the complete agreement. *Eng v. Stein*, 599 P.2d 796, 799–800 (Ariz. 1979); *see also Harbor Mech., Inc. v. Arizona Elec. Power Co-op., Inc.*, 496 F. Supp. 681, 686 (D. Ariz. 1980). The new agreement between Defendant and the government, as modified, was that Defendant would provide the government with information in proffered

meetings, sign the Statement of Facts, and turn themselves over to the government in exchange for a cooperation plea agreement and the government only using the Statement of Facts, and not the other information Defendant provided in the proffered meetings, as evidence against Defendant except as otherwise provided for in the Proffer Agreement.

Even if the Statement of Facts is found to be information protected by the Proffer Agreement, the U.S. government should be permitted to use the Statement because Defendant materially violated the modified agreement. In Arizona, a party to a contract can rescind the contract and be excused from performance if the other party materially breaches the contract. *Zancanaro v. Cross*, 339 P.2d 746, 750 (Ariz. 1959). By not surrendering themselves, Defendant materially violated the modified agreement because the government was unable to perform the cooperation plea agreement since Defendant was not physically present to render their guilty plea. Because the modified agreement was rescinded, the government is released of its obligations and can use the Statement of Facts as evidence against Defendant.

Defendant might construct their failure to self-surrender as a guilty plea withdrawal in order to argue that this withdrawal is not sufficient to trigger the waiver of protections given by the Proffer Agreement. *See United States v. Rosemond*, 841 F.3d 95, 109 (2d Cir. 2016) (holding that pleading not guilty was insufficient to trigger the waiver provision of a proffer agreement). Under the original Proffer Agreement between the government and Defendant, Defendant's failure to surrender themselves, if construed as a guilty plea withdrawal, would not have violated the original proffer agreement and would have been insufficient to trigger the waiver of a provision. However, under the modified agreement, which required Defendant to surrender themselves and to plead guilty to the crimes outlined in the Statement of Facts, Defendant's failure to surrender himself and plead guilty is a direct violation of the agreement and sufficient

to trigger the waiver of his protections outlined in the proffer agreement. *See Fox v. Johnson*, 832 F.3d 978 (9th Cir. 2016) (holding that a government is no longer bound by a plea agreement when a defendant withdraws a guilty plea entered pursuant to a plea agreement) (citing *United States v. Jones*, 469 F.3d 563, 567 (6th Cir. 2006)).

### C. Other Potential Challenges

#### i. Federal Rule of Evidence 410

Defendant might try to challenge the use of the Statement of Facts by arguing that its use is barred by Federal Rule of Evidence 410, which bars statements by the defendants during plea discussions that did not result in a guilty plea or resulted in a later withdrawn guilty plea. The Supreme Court of the United States has held that a defendant can waive Federal Rule of Evidence 410 protections, as long as the waiver is knowing and voluntary. *See United States v. Mezzanatto*, 513 U.S. 196 (1995). Additionally, although the Supreme Court did not rule on the issue in *Mezzanatto* or in any other case, lower courts have held that the government can use a defendant's protection-waived statement in its case-in-chief, and not just use it to impeach the defendant as a witness or in rebuttal. *See e.g. United States v. Mitchell*, 633 F.3d 997, 1004 (10th Cir. 2011); *United States v. Sylvester*, 583 F.3d 285, 288–94 (5th Cir. 2009); *United States v. Hardwick*, 544 F.3d 565, 569–71 (3d Cir. 2008).

Defendant waived any protection given by Federal Rule of Evidence 410 by signing the Proffer Agreement, and when they signed the Statement of Facts after indicating that they understood that the government would be using the Statement as evidence if they did not self-surrender. Because Defendant waived this protection and did not self-surrender as agreed to, the government will more than likely be able to use the Statement of Facts as evidence in its case-in-chief.



**ii. Local Rule Civil Procedure 83.7**

Defendant might also challenge the government's use of the Statement of Facts as evidence by arguing that the plea agreement, whether separate from or a part of the Proffer Agreement, was not written because the U.S. District Court for the District of Arizona has a Local Rule of Civil Procedure, 83.7, that states, "No agreement between parties or attorneys is binding, if disputed, unless it is in writing signed by the attorney of record..." This rule is likely not an issue because it is a rule for civil procedure and not criminal procedure. However, if this rule is applicable despite the indictment being a criminal proceeding, Defendant and Attorney A both signed the Statement of Facts. The Statement of Facts, although it does not state the full plea agreement between the government and Defendant, is written proof that Defendant agreed to plead guilty. Defendant cannot dispute that they had created a cooperation plea agreement with the government in which Defendant agreed to surrender themselves and plead guilty.

**III. Conclusion**

Defendant signed the Statement of Facts after indicating that they understood that the Statement was part of a cooperation plea agreement and would be used as the basis of their guilty plea if they self-surrendered, and that the Statement would be used as evidence against Defendant in the government's case-in-chief if they did not self-surrender. Arizona contract law allowed the government and Defendant to make the cooperation plea agreement, whether as a separate agreement or as a modification to the Proffer Agreement, despite paragraph 6 of the Proffer Agreement. Defendant materially violated this agreement by not self-surrendering to the government in a time deemed appropriate by the government. Because of this violation, the government is relinquished of any obligation it might have had to refrain from using the Statement of Facts as evidence against Defendant.

**Applicant Details**

First Name **David**  
 Last Name **Johnson**  
 Citizenship Status **U. S. Citizen**  
 Email Address [dj9433a@student.american.edu](mailto:dj9433a@student.american.edu)  
 Address

**Address**  
**Street**  
**401 Bridge Street, Apt. 215**  
**City**  
**Danville**  
**State/Territory**  
**Virginia**  
**Zip**  
**24541**  
**Country**  
**United States**

Contact Phone Number **423-582-1482**

**Applicant Education**

BA/BS From **Virginia Polytechnic Institute and State University**  
 Date of BA/BS **May 2011**  
 JD/LLB From **American University, Washington College of Law**  
[http://www.nalplawsonline.org/ndlsdir\\_search\\_results.asp?lscd=50901&yr=2010](http://www.nalplawsonline.org/ndlsdir_search_results.asp?lscd=50901&yr=2010)  
 Date of JD/LLB **May 23, 2021**  
 Class Rank **33%**  
 Does the law school have a Law Review/Journal? **Yes**  
 Law Review/Journal **No**  
 Moot Court Experience **No**

## Bar Admission

## Prior Judicial Experience

Judicial Internships/Externships	No
Post-graduate Judicial Law Clerk	Yes

## Specialized Work Experience

## References

Judge James Reynolds  
434-799-5171  
jjreynolds@vacourts.gov

Judge Joseph Milam  
434-799-5171

**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

April 21, 2022

The Honorable Elizabeth Hanes  
Spottswood W. Robinson III & Robert R. Merhige,  
Jr., U.S. Courthouse  
701 East Broad Street, 5th Floor  
Richmond, VA 23219

Dear Judge Hanes:

I am a Judicial Law Clerk for two Judges in the Circuit Court for the City of Danville, Virginia and I am licensed in Virginia to practice law. I am applying for your Judicial Law Clerk position with a start date in early August 2022 after my clerkship ends. I believe I would excel as a Clerk in your chambers because I have considerable work experience, a strong passion for service, and a deep interest in practicing criminal law.

After obtaining my bachelor's degree, I enlisted in the U.S. Army and served five years as a Human Intelligence Collector. While in this role, I deployed twice in support of military operations in northwest and east Africa. Specifically, I provided intelligence support to small Special Forces teams. My experiences in the Army allowed me to develop my analytical, writing, and oral communication skills in stressful environments that I was easily able to adapt for my legal education and work.

I knew I wanted to continue my service to the nation after I left the Army, so I decided to pursue a law degree to help provide justice to the American people. I know that I made the right decision because I have observed many proceedings here in the Danville Circuit Court and helped conduct critical research on various legal issues for the Judges during the eight months I have worked as a Law Clerk, and I absolutely love doing my part to serve the public.

There are two main reasons I want to work for you. First, I wish to learn from your vast experience working as a Public Defender and as an attorney with Consumer Litigation Associates, PC. I wish to work in criminal law and I feel your experience would be invaluable to learn from.

Second, I wish to live and serve in eastern Virginia. I am originally from Portsmouth, Virginia. After travelling the world and country during my time in the Army and in law school, I wish to be close to the area I am from. Working for you would allow me the perfect opportunity to do just that in a position where I can serve the public.

Thank you for your consideration and I look forward to hearing from you.

Respectfully,

David Johnson

## David Johnson

401 Bridge Street Apt. 215, Danville, VA, 24541  
(423) 582-1482 | da293ster@gmail.com

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### **EDUCATION**

**American University Washington College of Law and School of International Service**, Washington, D.C.

*Juris Doctor*, May 2021, GPA 3.57, cum laude

*Master of Arts* of International Affairs, December 2021, GPA 3.66

Activities: National Security Law Brief, Managing Editor; Civil-Military Society, Engagement Director

**Defense Language Institute – Foreign Language Center**, Monterey, CA

Graduate of Basic Modern Arabic Course, December 2014; GPA 3.3

**Cochise College**, Douglas, AZ

*Associate of Applied Science* in Intelligence Operation Studies, August 2013; GPA 4.0

**Virginia Polytechnic Institute & State University**, Blacksburg, VA

*Bachelor of Arts* in Political Science, May 2011; GPA 2.6

Activities: Virginia Tech Corps of Cadets, Company Executive Officer; Political Science Club, Member; Model UN, Member; Cigar Club, Member.

### **EXPERIENCE**

**Danville Circuit Court**, 22nd Judicial District of Virginia, Danville, VA

*Judicial Law Clerk*, August 2021-Anticipated End: August 2022

- Conduct legal research and draft memoranda on various legal issues for Circuit Court Judges.
- Review divorce and name change decrees before submitting the decrees to the Judges for approval.
- Read and respond to correspondence from prisoners addressed to the Judges.

**Department of Justice**, Criminal Division, Organized Crime and Gang Section, Washington, D.C.

*Volunteer Legal Intern*, January 2021- April 2021

- Conducted legal research on and drafted memoranda analyzing criminal law and procedure for cases focused on prosecuting gangs and criminal organizations for violent crimes and racketeering.

**United States Embassy in Romania**, Criminal Justice Reform Working Group, Bucharest, Romania

*Virtual Legal Intern*, September 2020-December 2020

- Conducted legal research on and analyzed U.S. and foreign laws regarding human trafficking, including both sex trafficking and labor trafficking laws.
- Drafted recommendations to present to the Romanian government on how to prevent human trafficking, prosecute perpetrators of human trafficking, and protect victims of human trafficking.

**Department of Justice**, Criminal Division, Narcotic and Dangerous Drug Section, Washington, D.C.

*Volunteer Legal Intern*, June 2020-August 2020

- Conducted legal research on and drafted memoranda analyzing criminal law and procedure for cases that dealt with violations of federal narcotic regulations and/or federal anti-trafficking laws.
- Analyzed and wrote summaries of evidence to help guide attorneys on how to approach a case.

**Department of Justice**, National Security Division, Office of Law and Policy, Washington, D.C.

*Volunteer Legal Intern*, January 2020-April 2020

- Conducted legal research on and drafted memoranda analyzing national security issues.
- Helped to write and edit Congressional testimony, issue papers, and a monograph.
- Observed interagency coordination meetings.

## David Johnson

401 Bridge Street Apt. 215, Danville, VA, 24541  
(423) 582-1482 | da293ster@gmail.com

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### **Washington College of Law, War Crimes Research Office, Washington, D.C.**

*Dean's Fellow for Afghanistan Documentation Project, July 2019-August 2019*

- Read various public reports on possible violations of International Humanitarian Law (IHL) in Afghanistan from 1979 through the present.
- Entered specific possible violations of IHL from reports into a database for use by researchers.
- Coded datapoints for database inputs.

### **BAE Systems, McLean, VA**

*Senior FMV Analyst, April 2018-August 2018*

- Exploited various types of imagery supporting counterterrorism operations in a round-the-clock work environment.
- Compiled imagery and wrote reports for use in briefings to government officials.

### **United States Army, Headquarters Support Company, 2nd Battalion, 3rd Special Forces Group (A)**

*Strategic Debriefing and Human Intelligence Collector, January 2013-April 2018*

Rank: Specialist/E-4

- Collected and reported intelligence in Africa to support Special Forces teams.
- Conducted interviews with various personnel for reports.
- Analyzed and integrated Human Intelligence reporting with All-Source and Signals Intelligence analyses.

### **ADDITIONAL INFORMATION**

**Language Skills:** Modern Standard Arabic (intermediate proficiency); French (elementary proficiency).

**Clearance:** TS/SCI re-granted 12/2019.

JOHNSON DAVID A 4769433 08/30

01/28/22

1 OF 2

AMERICAN UNIVERSITY  
WASHINGTON, D.C.

FALL 2018  
LAW-501 CIVIL PROCEDURE 04.00 B+ 13.20  
LAW-504 CONTRACTS 04.00 B+ 13.20  
LAW-516 RESEARCH & WRITING I 02.00 B+ 06.60  
LAW-522 TORTS 04.00 A- 14.80  
CREDIT AND QUALITY POINTS FOR  
LAW-516 APPLY TOWARDS  
BOTH J.D. AND M.A. PROGRAMS  
LAW SEM SUM: 14.00HRS ATT 14.00HRS ERND 47.80QP 3.41GPA

SPRING 2019  
LAW-503 CONSTITUTIONAL LAW 04.00 B- 10.80  
LAW-507 CRIMINAL LAW 03.00 A- 11.10  
LAW-517 RESEARCH & WRITING II 02.00 B 06.00  
LAW-518 PROPERTY 04.00 A 16.00  
LAW-661 INT'L BUSINESS TRANSACTIONS 03.00 B+ 09.90  
CREDIT AND QUALITY POINTS FOR  
LAW-517 & LAW-661 APPLY TOWARDS  
BOTH J.D. AND M.A. PROGRAMS  
LAW SEM SUM: 16.00HRS ATT 16.00HRS ERND 53.80QP 3.36GPA

SUMMER 2019  
LAW-906 INTL CRIM LAW: ACCOUNTABILITY 03.00 A- 11.10  
LAW-907 INTL LGL APPROCHS TO TERRORISM 03.00 A- 11.10  
CREDIT AND QUALITY POINTS FOR  
LAW-906 & LAW-907 APPLY TOWARDS  
BOTH J.D. AND M.A. PROGRAMS  
LAW SEM SUM: 6.00HRS ATT 6.00HRS ERND 22.20QP 3.70GPA

FALL 2019  
TOOLS OF RESEARCH PASSED:  
TOOL OF RESEARCH--ARABIC  
LAW-508 CRIMINAL PROCEDURE I 03.00 A- 11.10  
LAW-611 BUSINESS ASSOCIATIONS 04.00 B 12.00  
LAW-633 EVIDENCE 04.00 A 16.00  
LAW-849D LEGAL DRAFTING: INTL CONTRACTS 02.00 A 08.00  
SIS-689 FOREIGN POL: THEOR DECISN MKNG 03.00 A 12.00  
SIS-730 SKILLS INST IN INT'L AFFAIRS  
REAL WORLD STRATEGIC PLANNING 01.00 P 00.00  
AU SEM SUM: 4.00HRS ATT 4.00HRS ERND 12.00QP 4.00GPA  
LAW SEM SUM: 13.00HRS ATT 13.00HRS ERND 47.10QP 3.62GPA

AMERICAN UNIVERSITY  
WASHINGTON, D.C.

SPRING 2020

LAW-550 LEGAL ETHICS 02.00 P 00.00  
LAW-769 EXTERNSHIP SEMINAR  
SUPERVISED EXTERNSHIP SEMINAR 02.00 P 00.00  
LAW-840 SECURED TRANSACTIONS 04.00 P 00.00  
LAW-899 EXTERNSHIP FIELDWORK  
SUPERVISED EXTERNSHP FIELDWORK 04.00 P 00.00  
SIS-653 TOPICS IN U.S. FOREIGN POLICY  
U.S. COUNTERTERRORISM POLICY 03.00 A 12.00  
SIS-730 SKILLS INST IN INT'L AFFAIRS  
WRITING OP-EDS 01.00 P 00.00  
AU SEM SUM: 4.00HRS ATT 4.00HRS ERND 12.00QP 4.00GPA  
LAW SEM SUM: 12.00HRS ATT 12.00HRS ERND 0.00QP 0.00GPA

FALL 2020

LAW-697 WILLS TRUSTS ESTATES 04.00 A 16.00  
LAW-822 LAW,POLICY&AMERICAN INTEL 03.00 A 12.00  
LAW-927 INT'L TRAFFICKING IN PERSONS 03.00 A 12.00  
LAW-980 ADV INTL LAW & PEACE NEGOT 03.00 A 12.00  
SIS-710 COLLOQUIUM IN INT'L RELATIONS  
ADVANCED INTERNATIONAL LAW 03.00 A 12.00  
SIS-730 SKILLS INST IN INT'L AFFAIRS  
DIPLOMATIC PRACTICE 01.00 P 00.00  
CREDIT AND QUALITY POINTS FOR  
LAW-980 APPLY TOWARDS  
BOTH J.D. AND M.A. PROGRAMS  
AU SEM SUM: 4.00HRS ATT 4.00HRS ERND 12.00QP 4.00GPA  
LAW SEM SUM: 13.00HRS ATT 13.00HRS ERND 52.00QP 4.00GPA

SPRING 2021

LAW-692 ANTITRUST LAW 03.00 A 12.00  
LAW-724 BANKING & FIN INST: U.S. REG 03.00 B 09.00  
LAW-749 WHITE COLLAR CRIME 03.00 B+ 09.90  
LAW-769 EXTERNSHIP SEMINAR  
ADVANCED EXTERNSHIP SEMINAR 01.00 P 00.00  
LAW-899 EXTERNSHIP FIELDWORK  
SUPERVISED EXTERNSHP FIELDWORK 02.00 P 00.00  
SIS-653 TOPICS IN U.S. FOREIGN POLICY  
NAT'L SECURITY IN CYBERSPACE 03.00 A- 11.01  
AU SEM SUM: 3.00HRS ATT 3.00HRS ERND 11.01QP 3.67GPA  
LAW SEM SUM: 12.00HRS ATT 12.00HRS ERND 30.90QP 3.43GPA  
DEGREE AWARDED:  
JURIS DOCTOR  
DEGREE DATE:  
05/23/21  
HONORS:  
CUM LAUDE  
JD CUM SUM: 86.00HRS ATT 86.00HRS ERND 253.80QP 3.57GPA

JOHNSON                      DAVID                      A                      4769433                      08/30

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2 OF 2

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FALL 2021

SIS-724

SISG-770

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TOPICS IN US FOR POL/NATL SEC

US AS WORLD POWER SINCE 1898                      03.00    A    12.00

AU SEM SUM: 6.00HRS ATT 6.00HRS ERND 21.00QP 3.50GPA

DEGREE AWARDED:

MASTER OF ARTS

DEGREE DATE:

12/23/21

MAJOR:

INTERNATIONAL AFFAIRS

GRADUATING GPA:

3.66

PROGRAM GPA:

3.66

END OF TRANSCRIPT

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# Virginia Tech

Office of the University Registrar • Blacksburg, VA 24061

Student Name: Johnson, David Anthony

Student ID: 905 24 1011

Date of Birth: AUG 30, 1989

## STUDENT'S RECORD

Subject Title Dept. No. Hrs. Gr. Qual. Cr.

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# Virginia Tech

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Student Name: **Johnson, David Anthony**  
 Student ID: **TE905 24 1011**  
 Date of Birth: **AUG 30, 1989**  
 Subject Title: **Virginia Tech** Dept. No. **1011** Hrs. **3** Gr. **0.0** Qual. **Cr.**

Subject Title: **Virginia Tech** Dept. No. **1011** Hrs. **3** Gr. **0.0** Qual. **Cr.**

Spring Semester 2010  
 Public Speaking  
 American Revolution  
 Military Leadership Practicum  
 The Presidency  
 Administrative Law and Policy  
 International Relations  
 International Relations

905 24 1011 TERM GPA: 2.86  
 Virginia Tech Cum GPA: 2.90

Fall Semester 2010  
 The Vietnam War  
 Leading in Your Profession  
 Morality and Justice  
 Political Communication  
 Con Law Structures and Relationships  
 Latin Amer Politics

905 24 1011 TERM GPA: 1.69  
 Virginia Tech Cum GPA: 2.72

Spring Semester 2011  
 Wines and Vines  
 Brewing Science and Technology  
 SS: The CIA-Orig, Func, Capabl  
 Modern Military History  
 Leading in Your Profession  
 Global Environ Issues  
 Introductory Sociology

905 24 1011 TERM GPA: 1.99  
 Virginia Tech Cum GPA: 2.61

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**NAME:** JOHNSON DAVID A**STUDENT ID:** \*\*\*-\*\*-0410**PAGE** 1 **OF** 1**PROGRAM / TITLE:** 01 AD / ARABIC MODERN BASIC**ATTENDANCE DATES:** 08/22/2013 - 12/18/2014**LECTURE / LAB HOURS:** 1920**COURSE WORK**

<u>COMPLETION DATE</u>	<u>CLASS NUMBER</u>	<u>COURSE</u>	<u>COURSE TITLE</u>	<u>SUA</u>	<u>SUE</u>	<u>GP</u>	<u>GRADE</u>
01/22/2014	21501AD02013	AD101	ELEMENTARY ARABIC I	4	4	10.8	B-
03/20/2014	21501AD02013	AD102	ELEMENTARY ARABIC II	4	4	13.2	B+
03/19/2014	21501AD02013	AD110	ELEMENTARY ARABIC CONVERSATION	3	3	11.1	A-
03/14/2014	21501AD02013	AD120	INTRO TO JOB RELATED SKILLS IN AD	2	2	6.0	B
03/12/2014	21501AD02013	AD140	INTRO TO ARABIC CULTURE	2	2	7.4	A-
07/01/2014	21501AD02013	AD201	INTERMEDIATE ARABIC I	4	4	13.2	B+
07/31/2014	21501AD02013	AD202	INTERMEDIATE ARABIC II	4	4	13.2	B+
07/17/2014	21501AD02013	AD210	INTERMEDIATE ARABIC CONVERSATION	3	3	11.1	A-
07/28/2014	21501AD02013	AD220	INTRO TO MILITARY TOPICS IN ARABIC	2	2	6.0	B
07/17/2014	21501AD02013	AD240	HIST AND GEO OF THE AD REGION	2	2	7.4	A-
09/08/2014	21501AD02013	AD301	ADVANCED ARABIC I	4	4	13.2	B+
10/30/2014	21501AD02013	AD302	ADVANCED ARABIC II	4	4	13.2	B+
10/20/2014	21501AD02013	AD310	ADVANCED ARABIC CONVERSATION	3	3	11.1	A-
10/31/2014	21501AD02013	AD320	COMPREHENSIVE MILITARY TOPICS IN AD	2	2	5.4	B-
10/17/2014	21501AD02013	AD340	ARABIC AREA/CULTURAL STUDIES	2	2	7.4	A-

**TOTAL UNITS/POINTS:** 45 45 149.7**GPA THIS PROGRAM: 3.3****Course Remarks:**

The DLIFLC Course Catalog can be found at: [www.dliflc.edu](http://www.dliflc.edu) Courses 120, 140, 220, 240, 340 are General Education courses. (Areas: Critical Thinking, Humanities, Area Studies). Post-DLPT (Defense Language Proficiency Test) Training is a non-credit activity consisting of test review and preparation.

**Grade Remarks:**

SUA = Semester Units Attempted  
SUE = Semester Units Earned GP = Grade Points  
A = 4.0 A- = 3.7 B+ = 3.3 B = 3.0 B- = 2.7 C+ = 2.3 C = 2.0 C- = 1.7 D+ = 1.3 D = 1.0 F = 0.0  
P = Pass (grade of C or higher); not calculated in GPA  
MW = Military Withdrawal (reassignment)  
W = Withdrawal

**Honors:**

A student must meet all requirements for the DLIFLC basic language program diploma plus meet the exit examination (Defense Language Proficiency Test) criteria. Additional information can be found at: [www.dliflc.edu](http://www.dliflc.edu) - Click Catalog (ILR Scale).

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**DATE PREPARED:** 10/02/2017

**REGISTRAR**



# COCHISE COLLEGE

Sierra Vista, Arizona 85635

DATE OF BIRTH: 30-AUG-1989

STUDENT ID: C00105893

SSN: \*\*\*\*\*0410

PAGE: 1

DATE ISSUED: 23-OCT-2017

## OFFICIAL TRANSCRIPT OF ACADEMIC RECORD: David Anthony Johnson

Course Level: Undergraduate

## Comments:

18 Units Gen Ed Requirement Satisfied by BA Degree  
Virginia Polytech Inst & State 05-14-2011  
AAS/IOST-HIC Completed 10-11-2013

Degree Awarded Associate of Applied Science 12-MAY-2014

Primary Degree

Major : Intelligence Op Studies

Maj/Concentration : IO Human Intel Collector

***** TRANSCRIPT TOTALS *****				
	Earned Hrs	GPA Hrs	Points	GPA
TOTAL INSTITUTION	27.00	27.00	108.00	4.00
TOTAL TRANSFER	24.00	0.00	0.00	0.00
OVERALL	51.00	27.00	108.00	4.00
***** END OF TRANSCRIPT *****				

SUBJ NO.	COURSE TITLE	CRED GRD	PTS R
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2007-2011		Virginia Polytech Inst & State	
HIE 100	Elect:Hist of Modern World	3.00	NGR
HIE 200	Elect:US South	3.00	NGR
HIE 200	Elect:American Revolution	3.00	NGR
POE 200	Elect:Intro Political Theory	3.00	NGR
POE 200	Elect:Research Methods	3.00	NGR
POE 200	Elect:Intro World Politics	3.00	NGR
POE 200	Elect:Political Theory	3.00	NGR
POE 200	Elect:The Presidency	3.00	NGR
Hhrs: 24.00 GPA-Hrs: 0.00 QPts: 0.00 GPA: 0.00			

## INSTITUTION CREDIT:

Summer 2 2013			
IOS 100	Intro to Intel Ops Studies	3.00	A 12.00
IOS 103	Intel Law and Admin of Justice	1.00	A 4.00
IOS 105	Interrogation Operations	3.00	A 12.00
IOS 106	Map Reading and Analysis	3.00	A 12.00
IOS 111	Info Sec for Intel Operations	1.00	A 4.00
IOS 114	Reporting of Intelligence Data	3.00	A 12.00
IOS 115	Briefing Skills	1.00	A 4.00
IOS 201	Collection Operations	3.00	A 12.00
IOS 204	Interrogation Interview Tech	3.00	A 12.00
IOS 214	Reporting of Intel Data II	3.00	A 12.00
IOS 226	Interrogation/Interview TechII	3.00	A 12.00
Hhrs: 27.00 GPA-Hrs: 27.00 QPts: 108.00 GPA: 4.00			

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Good Standing

\*\*\*\*\* CONTINUED ON NEXT COLUMN \*\*\*\*\*

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## David Johnson

401 Bridge Street Apt. 215, Danville, VA, 24541  
(423) 582-1482 | da293ster@gmail.com

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### WRITING SAMPLE

The attached writing sample is a memorandum I wrote for Judge Reynolds of the Danville Circuit Court, for whom I clerk. During my first month clerking for Judge Reynolds, I observed a bench trial for a plea in bar that Judge Reynolds presided over. The three main issues of the trial were whether the plaintiff and defendant formed a partnership, the length of such partnership, and the scope of the partnership. At the end of the trial, Judge Reynolds had decided that such a partnership was formed and decided its length; however, the issue of whether the defendant transferred title of his company to the partnership remained. Judge Reynolds asked me to write a memorandum on that remaining issue. The following writing sample is that memorandum before I converted it to a letter opinion for Judge Reynolds with edits he requested.

In preparing this letter opinion as a writing sample, I made the following edits: I refer to the parties as Plaintiff and Defendant and changed the names of the corporate entities. I made these edits for privacy purposes.

### Summary

On August 18, 2021, the Court ruled that Plaintiff and Defendant had formed a partnership on January 4, 2017 that lasted until August 2, 2017. Pending before the Court is the issue of what was the scope of that partnership, specifically, what are the assets of the partnership. For the following reasons, the Court should find that the partnership did not acquire Defendant's Company ("DC").

### Background

At some point prior to January 4, 2017, Defendant formed DC, a corporation that makes decorative vinyl accessories for various electronic devices.<sup>1</sup> After some discussion, Plaintiff and Defendant signed a Letter of Intent ("LOI") on January 4, 2017 where Plaintiff and Defendant would "become partners in a company that will assume the assets and obligations of [DC], and directly related companies, entities, and DBAs owned by Defendant."<sup>2</sup> Additionally, the LOI stated that "[Plaintiff and Defendant] shall choose and hire a CPA to help determine the best corporate structure currently assumed to be an LLC with a S-Corporation designation."

Separately, the LOI also stated that Plaintiff and Defendant would form a separate company to purchase a building.<sup>3</sup> To that end, Plaintiff and Defendant formed P and D, LLC in February 2017.<sup>4</sup>

In a letter dated August 2, 2017, Defendant's counsel notified Plaintiff that the business relationship between Plaintiff and Defendant established under the LOI was terminated.<sup>5</sup>

### Procedural Posture

Plaintiff filed the original complaint of this case on July 10, 2019 alleging breach of contract; conversion and trover; fraud in the inducement, breach of the duty of loyalty, duty of care, and duty of good faith and fair dealing; request for accounting; and judicial dissolution.<sup>6</sup> Defendant filed an answer, counterclaim, demurrer, plea in bar, and motion craving oyer on August 1, 2019.<sup>7</sup> After holding a hearing on December 3, 2019 and finding that the LOI was not an enforceable contract, the Court sustained Defendant's demurrer, dismissing Count I of the complaint but granting Plaintiff leave to amend counts II-VI, and denied the motion craving oyer in an order signed January 6, 2020.<sup>8</sup>

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<sup>1</sup> Tr. 13:20-14:13.

<sup>2</sup> Pl.'s Ex. 7.

<sup>3</sup> *Id.*

<sup>4</sup> Pl.'s Ex. 14.

<sup>5</sup> Pl.'s Ex. 20.

<sup>6</sup> Compl.

<sup>7</sup> Answer and Countercl.; Dem. and Plea in Bar; Mot. Craving Oyer.

<sup>8</sup> Dec. 3, 2019 Letter Op.; Jan. 6, 2020 Order.

Plaintiff then filed an amended complaint on January 10, 2020.<sup>9</sup> Defendant filed a demurrer, answer, plea in bar, and counterclaim on January 28, 2020.<sup>10</sup> On June 9, 2020, Plaintiff filed a motion to amend the amended complaint to increase the ad damnum clause.<sup>11</sup> The Court held a hearing on Defendant's demurrer and Plaintiff's motion to amend pleadings on June 11, 2020.<sup>12</sup> Based on that hearing, the Court granted Plaintiff's motion to amend the pleadings, sustained Defendant's demurrer to Count III in the amended complaint and dismissed that count with prejudice, and overruled the demurrer to all other counts in an order signed June 22, 2020.<sup>13</sup>

In a scheduling order dated August 26, 2020, the Court scheduled a bench trial for Defendant's plea in bar to determine the issues: "(1) whether there was a partnership between [Plaintiff] and [Defendant]; (2) the scope of any such partnership; and (3) the length of any such partnership."<sup>14</sup> Originally scheduled for December 11, 2020, the trial was continued until August 18, 2021.<sup>15</sup> During that hearing, the Court ruled that Plaintiff and Defendant formed a partnership on January 4, 2017 that lasted until August 2, 2017.<sup>16</sup> The Court also requested the parties to submit authorities on what assets are in the partnership, and specifically asked "can assets of a corporation be transferred without a contract to do so and can they be transferred when there's not clear agency?"<sup>17</sup>

### Analysis

- I. The formation of the partnership between Plaintiff and Defendant did not automatically transfer title of DC stock from Defendant to the partnership, and there is no instrument indicating that Defendant transferred title of DC stock to the partnership

A partnership owns property that either the partnership acquired in its name or one or more partners acquired "with an indication in the instrument transferring title to the property of the person's capacity as a partner. . . ."<sup>18</sup> A partnership acquires property by a transfer to "the partnership in its name" or "one or more partners in their capacity as partners in the partnership."<sup>19</sup> Property acquired by a partner "without an indication in the instrument transferring title to the property of the person's capacity as partner...and without use of partnership assets, is presumed to be separate property, even if used for partnership purposes."<sup>20</sup>

Defendant founded DC before January 4, 2017, the date which the Court held that the Plaintiff and Defendant partnership started. Therefore, under Va. Code § 50-73.90(D), DC was Defendant's property and not partnership property when it was formed because it was formed

<sup>9</sup> Am. Compl.

<sup>10</sup> Dem. to Am. Compl.; Answer, Plea in Bar, and Countercl. to Am. Compl.

<sup>11</sup> Mot. to Amend Pleadings.

<sup>12</sup> June 22, 2020 Order.

<sup>13</sup> *Id.*

<sup>14</sup> Aug. 26, 2020 Scheduling Order.

<sup>15</sup> *Id.*; January 4, 2021 Scheduling Order; June 15, 2021 Scheduling Order.

<sup>16</sup> Tr. 246:8-17.

<sup>17</sup> Tr. 233:11-14, 238:4-239:22, 246:24-247:3.

<sup>18</sup> Va. Code Ann. § 50-73.90(A).

<sup>19</sup> Va. Code Ann. § 50-73.90(B).

<sup>20</sup> Va. Code Ann. § 50-73.90(D).

before the partnership, so Defendant could not have acquired the company in the partnership's name or in their name on behalf of the partnership.

There is nothing within Va. Code § 50-73.90 to indicate that a partner's property is automatically transferred upon the formation of a partnership. However, Va. Code § 50-73.81 allows partnership agreements, when created, to govern partnerships. Although the Court has found that the partnership between Plaintiff and Defendant was formed the same day that both parties signed the LOI, there is nothing to indicate that the LOI served as a partnership agreement that included a term whereby Defendant transferred DC stock to the partnership.<sup>21</sup> First, the Court previously ruled that the LOI was not an enforceable contract.<sup>22</sup> Second, the LOI itself stated that the parties "will become partners in a company."<sup>23</sup> While the term "partners" is used, it is used in conjunction with the phrase "in a company", and so it seems that the intention of the parties was to form a company rather than a partnership.<sup>24</sup> Indeed, the LOI later states that the parties would hire a CPA to help determine an appropriate "corporate structure," which was assumed to be an LLC at the time the LOI was written.<sup>25</sup> Therefore, Defendant remained the sole owner of DC upon the formation of their partnership with Plaintiff because Virginia law does not automatically convert a partner's property to partnership property and there was no partnership agreement indicating that Defendant would transfer title of DC stock to the partnership. Additionally, the fact that DC and its assets were used for partnership purposes does not change the fact that DC remained Defendant's property.<sup>26</sup>

A possible method for the partnership to have acquired DC is through some instrument transferring title to its name or to either Plaintiff or Defendant on behalf of the partnership.<sup>27</sup> However, there is no evidence of any instrument transferring title of DC stock to the partnership. The only document that could arguably be considered an instrument transferring title is the LOI, but it is not a valid instrument. Again, the Court previously ruled that the LOI was unenforceable.<sup>28</sup> Additionally, the LOI states that the company intended to be formed "will assume the assets and obligations of [DC]," not that the company does presently assume the assets and obligations of DC.<sup>29</sup> Therefore, the LOI, the only document that may have been construed to be an instrument transferring title of DC stock to the partnership, is not such an instrument.

Because the formation of the Plaintiff and Defendant partnership did not automatically transfer the title of DC stock to the partnership, and there is no valid legal instrument transferring title DC stock to the partnership, there are two questions left for the Court to answer: (1) is there some other way to transfer title of corporate stock? and; (2) if there is another way to transfer

<sup>21</sup> See Tr. 246:8-17, Pl.'s Ex. 7.

<sup>22</sup> Dec. 3, 2019 Letter Op.; Jan. 6, 2020 Order.

<sup>23</sup> Pl.'s Ex. 7.

<sup>24</sup> *Id.* Although a partnership can be found even though the parties intended to form another type of business association, that does not necessarily mean the document where the parties expressed intent to form a business association becomes a partnership agreement. See Va. Code Ann. §§ 50.73-81(A), 50-73.88(A).

<sup>25</sup> *Id.*

<sup>26</sup> See Va. Code Ann. § 50-73.90(D).

<sup>27</sup> See Va. Code Ann. § 50-73.90(B).

<sup>28</sup> Dec. 3, 2019 Letter Op.; Jan. 6, 2020 Order.

<sup>29</sup> Pl.'s Ex. 7.



title of corporate stock, did Defendant transfer title of DC stock to the partnership in this manner?

- II. Defendant did not equitably transfer DC stock to the Plaintiff and Defendant partnership because there is no valid legal instrument transferring or assigning title of DC stock to the partnership. Additionally, the partnership did not pay consideration for the stock, and so it cannot be found to be the equitable owner of DC stock.

Even though there is nothing to indicate that the Plaintiff and Defendant partnership acquired physical possession of DC stock or had the partnership recorded as owner of the stock, that does not necessarily mean Defendant retained ownership of DC stock. “[P]ossession of stock certificates and registration of the certificates in the records of a corporation are prima facie evidence of shareholder status. However, possession of certificates and recordation of them in the corporation's records is not dispositive of the issue of true ownership.”<sup>30</sup> Indeed, an equitable assignment of stock can happen under Virginia law.

[T]here may be a transfer of title as between the parties without any such delivery amounting to a transfer of possession. The contract is executed, and the title passes, if such is the intention of the parties, even though the stock may remain in the name or in the possession of the seller ....<sup>31</sup>

The facts of *Day v. MCC Acquisition, LC* are that M.C. Construction, Inc. (“M.C.”) had an ownership interest in Virginia BCBS (“Trigon”) that converted to stock ownership, MCC Acquisition, LC (“MCC”) subsequently purchased “all of the assets of [M.C.], both tangible and intangible, of every kind and nature, wheresoever situate [sic] and howsoever held” in a purchase agreement, and that M.C. also “transfer[red], convey[ed], and assign[ed] all [of M.C.]’s rights, title and interest in the Assets” to MCC in a separate assignment agreement.<sup>32</sup> Later on, Dorothy Day (“Day”) acquired all of M.C.’s assets after M.C. had been liquidated, and Trigon stock was eventually converted to WellPoint, Inc. (“Wellpoint”) stock.<sup>33</sup> Day and MCC both claimed ownership of interpleaded stock proceeds from Wellpoint stock that could be traced back to M.C.’s ownership interest in Trigon.<sup>34</sup> There was no evidence that Trigon had delivered or issued stock to either M.C. or MCC.<sup>35</sup> Notably, the Supreme Court of Virginia found that M.C. equitably transferred its legal right to any Trigon stock, that later become Wellpoint stock, to MCC through the purchase and assignment agreements.<sup>36</sup>

The decision in *Day* makes it possible for the Court to find that an owner of stock equitably transferred ownership of the stock to another person or entity, even though the transferee does not have physical possession of the stock certificates.<sup>37</sup> However, “the validity

<sup>30</sup> *Barber v. VistaRMS, Inc.*, 272 Va. 319, 328, 634 S.E.2d 706, 711 (2006).

<sup>31</sup> *Day v. MCC Acquisition, LC*, 299 Va. 199, 210, 848 S.E.2d 800, 806 (2020) (citing 12A William Meade Fletcher & Carol A. Jones, *Fletcher Cyclopedic of the Law of Corporations* § 5613, at 346-48 (2017 rev. vol.)).

<sup>32</sup> 299 Va. at 203–04, 848 S.E.2d at 801–02.

<sup>33</sup> *Day*, 299 Va. at 204, 848 S.E.2d at 802.

<sup>34</sup> *Day*, 299 Va. at 207, 848 S.E.2d at 804.

<sup>35</sup> *Id.*

<sup>36</sup> *Day*, 299 Va. at 207-08, 848 S.E.2d at 804.

<sup>37</sup> *Day*, 299 Va. at 210, 848 S.E.2d at 805.

and efficacy of an assignment in the stock context depends upon the validity and efficacy of the *assignment instrument*. . . .<sup>38</sup> There needs to be some instrument assigning or transferring ownership of the stock for the alleged transferee to actually obtain legal title to the stock. As discussed previously, there is no valid instrument where Defendant transferred legal title of DC to his partnership with Plaintiff. Therefore, Defendant could not have equitably transferred DC stock to the partnership.

There is some evidence that Defendant may have intended to transfer DC stock to the partnership, such as where the LOI states that the company to be formed would assume the assets of DC, and DC employees were under the impression that Plaintiff was co-owner due to some of Defendant's representations.<sup>39</sup> However, intentions to transfer stock do not create a valid and enforceable instrument actually transferring stock, no matter how much Defendant intended to transfer stock to the partnership at that time. In a case where there was no independent instrument transferring or assigning ownership of stock between a father and his daughters, the Supreme Court of Virginia held that the father was the owner of the stock because he possessed the stock certificates, even though the father had at various points intended the stocks to be gifts to his daughters and the corporate stock transfer ledger reflected that the daughters had received the stock certificates.<sup>40</sup>

A final point of consideration for the Court is that there does not seem to be any consideration given by the partnership between Plaintiff and Defendant to Defendant individually for the DC stock. A lack of consideration does not mean that a partner cannot transfer title of personal property to the partnership. However, under Virginia law, principles of gifts *inter vivos* apply when there is no consideration paid for corporate stock.<sup>41</sup> The elements of a gift *inter vivos* are:

- (1) The gift must be of personal property; (2) possession of the property must be delivered at the time of the gift to the donee, or some other for him and the gift must be accepted by the donee; and (3) the title of the property must vest in the donee at the time of the gift.<sup>42</sup>

Gifts *inter vivos* require actual or constructive delivery, and so the remedy of finding that a putative assignee is the equitable owner of stock where delivery did not occur is barred when there is no consideration for said stock. Therefore, equitable title of DC stock cannot be assigned to the Plaintiff and Defendant partnership because the partnership did not pay consideration to Defendant for DC stock.

### Conclusion

Defendant never transferred title of DC stock to the partnership he formed with Plaintiff. Under Virginia law, the formation of the partnership did not automatically transfer ownership of

<sup>38</sup> *Id.* (emphasis added).

<sup>39</sup> Tr. 207:13-20; 213:3-19.

<sup>40</sup> See generally *Young v. Young*, 240 Va. 57, 393 S.E.2d 398 (1990).

<sup>41</sup> *Young*, 240 Va. at 62, 393 S.E.2d at 401.

<sup>42</sup> *Young*, 240 Va. at 63, 393 S.E.2d at 401. (citing *Taylor, Administratrix v. Smith*, 199 Va. 871, 874, 102 S.E.2d 160, 162-63 (1958)).

DC stock to the partnership. There was no partnership agreement providing that DC stock would become partnership property upon formation of the partnership. Because there was no instrument transferring title of DC stock to the partnership, the partnership did not become the equitable owner of DC stock. Furthermore, because the partnership did not pay consideration for the stock, the partnership could only become an actual owner of DC stock by obtaining delivery of the stock and not by obtaining equitable title that did not require delivery.

Separately, while formation of P and D, LLC was contemplated in the LOI, it is a separate corporate entity formed by Plaintiff and Defendant. There is nothing to indicate transfer of title of P and D, LLC to the partnership. In fact, no change to P and D, LLC occurred after the Plaintiff partnership ended on August 2, 2017. Therefore, P and D, LLC is also not an asset of the partnership.

**Applicant Details**

First Name **David**  
 Last Name **Johnson**  
 Citizenship Status **U. S. Citizen**  
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**Applicant Education**

BA/BS From **Virginia Polytechnic Institute and State University**  
 Date of BA/BS **May 2011**  
 JD/LLB From **American University, Washington College of Law**  
[http://www.nalplawschoolsonline.org/ndlsdir\\_search\\_results.asp?lscd=50901&yr=2010](http://www.nalplawschoolsonline.org/ndlsdir_search_results.asp?lscd=50901&yr=2010)  
 Date of JD/LLB **May 23, 2021**  
 Class Rank **33%**  
 Does the law school have a Law Review/Journal? **Yes**  
 Law Review/Journal **No**  
 Moot Court Experience **No**

## Bar Admission

## Prior Judicial Experience

Judicial  
Internships/        **No**  
Externships  
Post-graduate  
Judicial Law       **Yes**  
Clerk

## Specialized Work Experience

## Recommenders

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**This applicant has certified that all data entered in this profile and  
any application documents are true and correct.**

April 10, 2021

The Honorable Elizabeth Hanes  
Spottswood W. Robinson III & Robert R. Merhige,  
Jr., U.S. Courthouse  
701 East Broad Street, 5th Floor  
Richmond, VA 23219

Dear Judge Hanes:

I am currently a third-year law student at American University Washington College of Law applying for a Term Law Clerk position for the August 2022-August 2024 period. I believe I would excel as your Law Clerk because I have considerable analytical work experience, I have performed well in law school, I will have clerkship experience by the time I start working for you, and I have a strong passion for service.

After I barely graduated from college, I enlisted in the U.S. Army as a Human Intelligence Collector. My experience has enabled me to go through documents and other sources of information thoroughly and give a detailed analysis, through reports and briefings, to my supervisors. My experience has also prepared me to work on a short-notice and stressful project with constant communication whenever needed, meaning I am prepared to work long nights and weekends for you.

As my time in the Army was winding down, I knew I wanted to obtain an advanced degree and continue my service in a different way. Therefore, I decided to pursue a law degree. Fortunately, I had learned my lessons from nearly failing undergraduate school and applied myself to schools I attended for Army training. American University, luckily for me, took a chance and accepted me.

Since my matriculation, I have performed well academically, nearly head and shoulders above my undergraduate performance. Additionally, I have refined my legal analysis skills and gained an enhanced understanding of federal legal work from internships at the Department of Justice primarily focusing on national security and criminal law.

Through my limited legal experiences and my desire to serve, I know that I want to serve as a federal prosecutor. I believe that for me to be the best and fairest prosecutor I can be, I need to do a clerkship, if not two. Fortunately, the Danville Circuit Court in Virginia recently selected me to be their 2021-2022 Law Clerk. I am excited about what that position will hold for me and I know this experience will help me be a great Law Clerk for you.

I am generally interested in applying to federal clerkships located in Virginia after my state clerkship because I am from Portsmouth and Virginia is my home. However, I am applying to you specifically because of your extensive experience as an Assistant Federal Public Defender. I feel that clerking for you for two years would certainly help me to learn, gain perspective, and achieve that balance I am seeking to achieve as a future prosecutor.

Thank you for your consideration and I look forward to hearing from you soon.

Respectfully,

David "Dave" Johnson

# David Johnson

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## EDUCATION

**American University Washington College of Law and School of International Service**, Washington, D.C.  
*Juris Doctor*, May 2021, GPA 3.57, cum laude; *Master of Arts* candidate, December 2021, GPA 3.91  
Activities: National Security Law Brief, Managing Editor; Civil-Military Society, Engagement Director

**Defense Language Institute – Foreign Language Center**, Monterey, CA  
Graduate of Basic Modern Arabic Course, December 2014; GPA 3.3

**Cochise College**, Douglas, AZ  
*Associate of Applied Science* in Intelligence Operation Studies, August 2013; GPA 4.0

**Virginia Polytechnic Institute & State University**, Blacksburg, VA  
*Bachelor of Arts* in Political Science, May 2011; GPA 2.6  
Activities: Virginia Tech Corps of Cadets, Company Executive Officer; Political Science Club, Member; Model UN, Member; Cigar Club, Member.

## EXPERIENCE

**Danville Circuit Court**, 22nd Judicial District of Virginia, Danville, VA  
*Law Clerk*, Anticipated Start: August 2021-Anticipated End: August 2022

- Will conduct legal research and draft memoranda for sitting Judges.
- Will perform other various duties to support operational requirements.

**Department of Justice**, Criminal Division, Organized Crime and Gang Section, Washington, D.C.  
*Volunteer Legal Intern*, January 2021- April 2021

- Conducted legal research on and drafted memoranda analyzing criminal law and procedure for cases focused on prosecuting gangs and criminal organizations for violent crimes and racketeering.

**United States Embassy in Romania**, Criminal Justice Reform Working Group, Bucharest, Romania  
*Virtual Legal Intern*, September 2020-December 2020

- Conducted legal research on and analyzed U.S. and foreign laws regarding human trafficking, including both sex trafficking and labor trafficking laws.
- Drafted recommendations to present to the Romanian government on how to prevent human trafficking, prosecute perpetrators of human trafficking, and protect victims of human trafficking.

**Department of Justice**, Criminal Division, Narcotic and Dangerous Drug Section, Washington, D.C.  
*Volunteer Legal Intern*, June 2020-August 2020

- Conducted legal research on and drafted memoranda analyzing criminal law and procedure for cases that dealt with violations of federal narcotic regulations and/or federal anti-trafficking laws.
- Analyzed and wrote summaries of evidence to help guide attorneys on how to approach a case.

**Department of Justice**, National Security Division, Office of Law and Policy, Washington, D.C.  
*Volunteer Legal Intern*, January 2020-April 2020

- Conducted legal research on and drafted memoranda analyzing national security issues.
- Helped to write and edit Congressional testimony, issue papers, and a monograph.
- Observed interagency coordination meetings.



# David Johnson

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## Washington College of Law, War Crimes Research Office, Washington, D.C.

*Dean's Fellow for Afghanistan Documentation Project*, July 2019-August 2019

- Read various public reports on possible violations of International Humanitarian Law (IHL) in Afghanistan from 1979 through the present.
- Entered specific possible violations of IHL from reports into a database for use by researchers.
- Coded datapoints for database inputs.

## BAE Systems, McLean, VA

*Senior FMV Analyst*, April 2018-August 2018

- Exploited various types of imagery supporting counterterrorism operations in a round-the-clock work environment.
- Compiled imagery and wrote reports for use in briefings to government officials.

## United States Army, Headquarters Support Company, 2nd Battalion, 3rd Special Forces Group (A)

*Strategic Debriefing and Human Intelligence Collector*, January 2013-April 2018

Rank: Specialist/E-4

- Collected and reported intelligence in Africa to support Special Forces teams.
- Conducted interviews with various personnel for reports.
- Analyzed and integrated Human Intelligence reporting with All-Source and Signals Intelligence analyses.

## **ADDITIONAL INFORMATION**

**Language Skills:** Modern Standard Arabic (intermediate proficiency); French (elementary proficiency).

**Clearance:** TS/SCI re-granted 12/2019.

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FALL 2018  
LAW-501 CIVIL PROCEDURE 04.00 B+ 13.20  
LAW-504 CONTRACTS 04.00 B+ 13.20  
LAW-516 RESEARCH & WRITING I 02.00 B+ 06.60  
LAW-522 TORTS 04.00 A- 14.80  
LAW SEM SUM: 14.00HRS ATT 14.00HRS ERND 47.80QP 3.41GPA

SPRING 2019  
LAW-503 CONSTITUTIONAL LAW 04.00 B- 10.80  
LAW-507 CRIMINAL LAW 03.00 A- 11.10  
LAW-517 RESEARCH & WRITING II 02.00 B 06.00  
LAW-518 PROPERTY 04.00 A 16.00  
LAW-661 INT'L BUSINESS TRANSACTIONS 03.00 B+ 09.90  
LAW SEM SUM: 16.00HRS ATT 16.00HRS ERND 53.80QP 3.36GPA

SUMMER 2019  
LAW-906 INTL CRIM LAW: ACCOUNTABILITY 03.00 A- 11.10  
LAW-907 INTL LGL APPRCHS TO TERRORISM 03.00 A- 11.10  
LAW SEM SUM: 6.00HRS ATT 6.00HRS ERND 22.20QP 3.70GPA

FALL 2019  
TOOLS OF RESEARCH PASSED:  
TOOL OF RESEARCH--ARABIC  
LAW-508 CRIMINAL PROCEDURE I 03.00 A- 11.10  
LAW-611 BUSINESS ASSOCIATIONS 04.00 B 12.00  
LAW-633 EVIDENCE 04.00 A 16.00  
LAW-849D LEGAL DRAFTING: INTL CONTRACTS 02.00 A 08.00  
SIS-689 FOREIGN POL: THEOR DECISN MKNG 03.00 A 12.00  
SIS-730 SKILLS INST IN INT'L AFFAIRS  
REAL WORLD STRATEGIC PLANNING 01.00 P 00.00  
AU SEM SUM: 4.00HRS ATT 4.00HRS ERND 12.00QP 4.00GPA  
LAW SEM SUM: 13.00HRS ATT 13.00HRS ERND 47.10QP 3.62GPA

SPRING 2020  
LAW-550 LEGAL ETHICS 02.00 P 00.00  
LAW-769 EXTERNSHIP SEMINAR  
SUPERVISED EXTERNSHIP SEMINAR 02.00 P 00.00  
LAW-840 SECURED TRANSACTIONS 04.00 P 00.00  
LAW-899 EXTERNSHIP FIELDWORK  
SUPERVISED EXTERNSHP FIELDWORK 04.00 P 00.00  
SIS-653 TOPICS IN U.S. FOREIGN POLICY  
U.S. COUNTERTERRORISM POLICY 03.00 A 12.00  
SIS-730 SKILLS INST IN INT'L AFFAIRS  
WRITING OP-EDS 01.00 P 00.00  
AU SEM SUM: 4.00HRS ATT 4.00HRS ERND 12.00QP 4.00GPA  
LAW SEM SUM: 12.00HRS ATT 12.00HRS ERND 0.00QP 0.00GPA

FALL 2020  
LAW-697 WILLS TRUSTS ESTATES 04.00 A 16.00  
LAW-822 LAW,POLICY&AMERICAN INTEL 03.00 A 12.00  
LAW-927 INT'L TRAFFICKING IN PERSONS 03.00 A 12.00  
LAW-980 ADV INTL LAW & PEACE NEGOT 03.00 A 12.00  
SIS-710 COLLOQUIUM IN INT'L RELATIONS  
ADVANCED INTERNATIONAL LAW 03.00 A 12.00  
SIS-730 SKILLS INST IN INT'L AFFAIRS  
DIPLOMATIC PRACTICE 01.00 P 00.00  
AU SEM SUM: 4.00HRS ATT 4.00HRS ERND 12.00QP 4.00GPA  
LAW SEM SUM: 13.00HRS ATT 13.00HRS ERND 52.00QP 4.00GPA

SPRING 2021  
LAW-692 ANTITRUST LAW 03.00 A 12.00  
LAW-724 BANKING & FIN INST: U.S. REG 03.00 B 09.00  
LAW-749 WHITE COLLAR CRIME 03.00 B+ 09.90  
LAW-769 EXTERNSHIP SEMINAR  
ADVANCED EXTERNSHIP SEMINAR 01.00 P 00.00  
LAW-899 EXTERNSHIP FIELDWORK  
SUPERVISED EXTERNSHP FIELDWORK 02.00 P 00.00  
SIS-653 TOPICS IN U.S. FOREIGN POLICY  
NAT'L SECURITY IN CYBERSPACE 03.00 A- 11.01  
AU SEM SUM: 3.00HRS ATT 3.00HRS ERND 11.01QP 3.67GPA  
LAW SEM SUM: 12.00HRS ATT 12.00HRS ERND 30.90QP 3.43GPA

FALL 2021  
SIS-724 BIG DATA ANALYTICS/TEXT MINING 03.00 -- -- --  
AU SEM SUM: 3.00HRS ATT 0.00HRS ERND 0.00QP 0.00GPA

AU CUM SUM: 18.00HRS ATT 15.00HRS ERND 47.01QP 3.91GPA  
LAW CUM SUM: 86.00HRS ATT 86.00HRS ERND 253.80QP 3.57GPA  
END OF TRANSCRIPT

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# Virginia Tech

Office of the University Registrar • Blacksburg, VA 24061

Student Name: **Johnson, David Anthony**

Student ID: **905 24 1011**

Date of Birth: **AUG 30, 1989**

## STUDENT'S RECORD

Subject Title Dept. No. Hrs. Gr. Qual. Cr.

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Richard A. Sparks, Jr.

University Registrar

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# Virginia Tech

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Student Name: **Johnson, David Anthony**  
 Student ID: **TE905 24 1011**  
 Date of Birth: **AUG 30, 1989**  
 Subject Title: **Virginia Tech** Dept. No. **1011** Hrs. **3** Gr. **0.0** Qual. **Cr.**

Subject Title: **Virginia Tech** Dept. No. **1011** Hrs. **3** Gr. **0.0** Qual. **Cr.**

Spring Semester 2010  
 Public Speaking  
 American Revolution  
 Military Leadership Practicum  
 The Presidency  
 Administrative Law and Policy  
 International Relations  
 International Relations

905 24 1011 TERM GPA: 2.86  
 Virginia Tech Cum GPA: 2.90

Fall Semester 2010  
 The Vietnam War  
 Leading in Your Profession  
 Morality and Justice  
 Political Communication  
 Con Law Structures and Relationships  
 Latin Amer Politics

905 24 1011 TERM GPA: 1.69  
 Virginia Tech Cum GPA: 2.72

Spring Semester 2011  
 Wines and Vines  
 Brewing Science and Technology  
 SS: The CIA-Orig, Func, Capabl  
 Modern Military History  
 Leading in Your Profession  
 Global Environ Issues  
 Introductory Sociology

905 24 1011 TERM GPA: 1.99  
 Virginia Tech Cum GPA: 2.61

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**NAME:** JOHNSON DAVID A**STUDENT ID:** \*\*\*-\*\*-0410**PAGE** 1 **OF** 1**PROGRAM / TITLE:** 01 AD / ARABIC MODERN BASIC**ATTENDANCE DATES:** 08/22/2013 - 12/18/2014**LECTURE / LAB HOURS:** 1920**COURSE WORK**

<u>COMPLETION DATE</u>	<u>CLASS NUMBER</u>	<u>COURSE</u>	<u>COURSE TITLE</u>	<u>SUA</u>	<u>SUE</u>	<u>GP</u>	<u>GRADE</u>
01/22/2014	21501AD02013	AD101	ELEMENTARY ARABIC I	4	4	10.8	B-
03/20/2014	21501AD02013	AD102	ELEMENTARY ARABIC II	4	4	13.2	B+
03/19/2014	21501AD02013	AD110	ELEMENTARY ARABIC CONVERSATION	3	3	11.1	A-
03/14/2014	21501AD02013	AD120	INTRO TO JOB RELATED SKILLS IN AD	2	2	6.0	B
03/12/2014	21501AD02013	AD140	INTRO TO ARABIC CULTURE	2	2	7.4	A-
07/01/2014	21501AD02013	AD201	INTERMEDIATE ARABIC I	4	4	13.2	B+
07/31/2014	21501AD02013	AD202	INTERMEDIATE ARABIC II	4	4	13.2	B+
07/17/2014	21501AD02013	AD210	INTERMEDIATE ARABIC CONVERSATION	3	3	11.1	A-
07/28/2014	21501AD02013	AD220	INTRO TO MILITARY TOPICS IN ARABIC	2	2	6.0	B
07/17/2014	21501AD02013	AD240	HIST AND GEO OF THE AD REGION	2	2	7.4	A-
09/08/2014	21501AD02013	AD301	ADVANCED ARABIC I	4	4	13.2	B+
10/30/2014	21501AD02013	AD302	ADVANCED ARABIC II	4	4	13.2	B+
10/20/2014	21501AD02013	AD310	ADVANCED ARABIC CONVERSATION	3	3	11.1	A-
10/31/2014	21501AD02013	AD320	COMPREHENSIVE MILITARY TOPICS IN AD	2	2	5.4	B-
10/17/2014	21501AD02013	AD340	ARABIC AREA/CULTURAL STUDIES	2	2	7.4	A-

**TOTAL UNITS/POINTS:** 45 45 149.7**GPA THIS PROGRAM: 3.3****Course Remarks:**

The DLIFLC Course Catalog can be found at: [www.dliflc.edu](http://www.dliflc.edu) Courses 120, 140, 220, 240, 340 are General Education courses. (Areas: Critical Thinking, Humanities, Area Studies). Post-DLPT (Defense Language Proficiency Test) Training is a non-credit activity consisting of test review and preparation.

**Grade Remarks:**

SUA = Semester Units Attempted  
SUE = Semester Units Earned GP = Grade Points  
A = 4.0 A- = 3.7 B+ = 3.3 B = 3.0 B- = 2.7 C+ = 2.3 C = 2.0 C- = 1.7 D+ = 1.3 D = 1.0 F = 0.0  
P = Pass (grade of C or higher); not calculated in GPA  
MW = Military Withdrawal (reassignment)  
W = Withdrawal

**Honors:**

A student must meet all requirements for the DLIFLC basic language program diploma plus meet the exit examination (Defense Language Proficiency Test) criteria. Additional information can be found at: [www.dliflc.edu](http://www.dliflc.edu) - Click Catalog (ILR Scale).

**Transcript Remarks:**

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FAYETTEVILLE, NC 28314

**DATE PREPARED:** 10/02/2017

**REGISTRAR**



# COCHISE COLLEGE

Sierra Vista, Arizona 85635

DATE OF BIRTH: 30-AUG-1989

STUDENT ID: C00105893

SSN: \*\*\*\*\*0410

PAGE: 1

DATE ISSUED: 23-OCT-2017

## OFFICIAL TRANSCRIPT OF ACADEMIC RECORD: David Anthony Johnson

Course Level: Undergraduate

## Comments:

18 Units Gen Ed Requirement Satisfied by BA Degree  
Virginia Polytech Inst & State 05-14-2011  
AAS/IOST-HIC Completed 10-11-2013

Degree Awarded Associate of Applied Science 12-MAY-2014

Primary Degree

Major : Intelligence Op Studies

Maj/Concentration : IO Human Intel Collector

***** TRANSCRIPT TOTALS *****				
	Earned Hrs	GPA Hrs	Points	GPA
TOTAL INSTITUTION	27.00	27.00	108.00	4.00
TOTAL TRANSFER	24.00	0.00	0.00	0.00
OVERALL	51.00	27.00	108.00	4.00
***** END OF TRANSCRIPT *****				

SUBJ NO.	COURSE TITLE	CRED GRD	PTS R
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## TRANSFER CREDIT ACCEPTED BY THE INSTITUTION:

2007-2011		Virginia Polytech Inst & State	
HIE 100	Elect:Hist of Modern World	3.00	NGR
HIE 200	Elect:US South	3.00	NGR
HIE 200	Elect:American Revolution	3.00	NGR
POE 200	Elect:Intro Political Theory	3.00	NGR
POE 200	Elect:Research Methods	3.00	NGR
POE 200	Elect:Intro World Politics	3.00	NGR
POE 200	Elect:Political Theory	3.00	NGR
POE 200	Elect:The Presidency	3.00	NGR
Hhrs: 24.00 GPA-Hrs: 0.00 Qpts: 0.00 GPA: 0.00			

## INSTITUTION CREDIT:

Summer 2 2013			
IOS 100	Intro to Intel Ops Studies	3.00	A 12.00
IOS 103	Intel Law and Admin of Justice	1.00	A 4.00
IOS 105	Interrogation Operations	3.00	A 12.00
IOS 106	Map Reading and Analysis	3.00	A 12.00
IOS 111	Info Sec for Intel Operations	1.00	A 4.00
IOS 114	Reporting of Intelligence Data	3.00	A 12.00
IOS 115	Briefing Skills	1.00	A 4.00
IOS 201	Collection Operations	3.00	A 12.00
IOS 204	Interrogation Interview Tech	3.00	A 12.00
IOS 214	Reporting of Intel Data II	3.00	A 12.00
IOS 226	Interrogation/Interview TechII	3.00	A 12.00
Hhrs: 27.00 GPA-Hrs: 27.00 Qpts: 108.00 GPA: 4.00			

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Fayetteville, NC 28314



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Debbie Quick, College Registrar

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April 10, 2021

The Honorable Elizabeth Hanes  
Spottswood W. Robinson III & Robert R. Merhige,  
Jr., U.S. Courthouse  
701 East Broad Street, 5th Floor  
Richmond, VA 23219

Dear Judge Hanes:

I am writing to provide a strong recommendation for Dave Johnson. He was a student in two of my classes, Contracts and Secured Transactions. He did well in both, and particularly so in Secured Transactions despite having to deal with very serious adversity when he was taking the course. During his time in law school I have seen him progress from being quite good to truly outstanding. These are the reasons I recommend him so strongly.

I first got to know Mr. Johnson when he was a first year student in Contracts. He was among a group of other military and former military students. He and his colleagues worked hard, engaged with the material, and for the most part did well. Mr. Johnson certainly did well, earning a "B+" (which to me means something along the lines of "very good"). I take recommendations seriously, and for academically competitive jobs, I require at least a "B+" to provide a recommendation. But this was only the beginning; it reflects where Mr. Johnson was when he started law school after about five years in the Army.

You can see from his transcript that he was generally in the B+ range during his first year. At the beginning of his second year, he was already moving up, earning many straight "A" grades, including in particularly demanding courses like Evidence. I had Mr. Johnson again in the spring of his second year for Secured Transactions, which is another demanding course. Throughout the course he was among the best students in class, both in person and later online (because of covid-19). Although by law school rule his transcript shows only a "P" and I am not permitted to disclose his actual grade (although I did grade the exams in the usual way), I can say that his exam performance was truly excellent, and like his class participation, put him among the top students in a large class of about 60-70 students. This even though he was dealing not only with the disruption of covid-19, like everyone, but the loss of a close relative.

If I were looking to hire a new lawyer, Dave Johnson would surely be near the top of my list. I am happy to give him this strong, enthusiastic recommendation, and I am happy to provide any further information that I can. Please feel free to get in touch.

Yours very truly,

David V. Snyder  
Professor of Law  
Director, Business Law Program

David Snyder - dsnyder@wcl.american.edu - 202-274-4238



April 10, 2021

The Honorable Elizabeth Hanes  
Spottswood W. Robinson III & Robert R. Merhige,  
Jr., U.S. Courthouse  
701 East Broad Street, 5th Floor  
Richmond, VA 23219

Dear Judge Hanes:

I write this recommendation on behalf of Mr. David ("Dave") Johnson. Dave is energetic, enthusiastic, organized, and committed to task completion. His work ethic, interpersonal relations, past work experience in and out of the United States Army, and legal skills make him a perfect, hard-to-pass-up candidate for a law clerk position.

During his 1L year in 2018-2019, Dave was a student in my Legal Rhetoric/Introduction to Advocacy class at American University, Washington College of Law. Legal Rhetoric is a writing, research, and citation class in which students learn to write various types of interoffice documents during the fall semester and motion memos and briefs during the spring semester. As you are aware, legal writing differs dramatically from undergraduate writing. Most students have a moderately difficult time making the transition to a more analytical and structured style. Dave, however, was a frequent volunteer in class; his comments and questions showed a complete grasp of the course material, which he often explained to others. Never content to be an average student, Dave regularly came to my office hours, as he continued to challenge himself to be a better legal writer. He received a B+ first semester and a B second semester (his grade second semester went down because the major assignment is a partnered assignment, and Dave's partner was not as strong a student as Dave was). Dave also received a Certificate of Excellence on the Legal Rhetoric Research, Citation, and Writing Strategy Exam, placing him as one of an elite number of students that received 95% or above on the exam.

Unlike the traditional doctrinal classes, Legal Rhetoric is a smaller class of 21 students. This smaller setting allows a professor to interact closely with his or her students. Dave is a well-rounded individual--a pleasure to teach. He is humble, friendly, respectful, down-to-earth, and mature, which really sets him apart from the typical law student.

Although I have not seen Dave as often over the last year, each time I do, I am even more and more proud of his accomplishments. His solid legal and advocacy skills and his impressive work experience, before and during law school, make him an excellent fit as a law clerk. Dave wants to be a federal prosecutor, and working in a courtroom as a clerk would give him invaluable experience to help achieve that goal.

No matter his ultimate specialty, Dave has the academic, organizational, and personal skills to succeed. It is with complete confidence that I recommend Dave Johnson to you. Please let me know if I can be of further assistance.

Very truly yours,

David H. Spratt  
Professor of Legal Rhetoric  
Acting Director, Legal Rhetoric Program

THE AMERICAN UNIVERSITY  
WASHINGTON COLLEGE OF LAW

David Spratt - dspratt@wcl.american.edu - 202-274-4059

May 25, 2021

The Honorable Elizabeth Hanes  
Spottswood W. Robinson III & Robert R. Merhige,  
Jr., U.S. Courthouse  
701 East Broad Street, 5th Floor  
Richmond, VA 23219

Dear Judge Hanes:

I write to recommend David Johnson to be a law clerk in your chambers. Mr. Johnson is a top student with an honorable and unusual background, and will be an excellent law clerk. He is smart, thoughtful, highly-motivated, and disciplined. I recommend him without reservation.

Mr. Johnson came to law school after being a United States Army Airborne Special Forces Human Intelligence Officer with several tours in Africa. He served for five years, leading intelligence gathering operations in combat zones and supporting Special Forces missions. He enrolled in the JD/MA program at American University with the goal of working in federal criminal law and national security law.

As a law student, Mr. Johnson demonstrated all of the talents and skills necessary for success. He was a great student in Criminal Procedure, not only smart on the law, but engaged in the deeper issues of the class. He is exactly the type of law graduate I would want as a law clerk. He has all of the requisite strong writing and analytical skills, but he also has a level of interest that will make him a real asset in chambers.

Mr. Johnson has more than taken advantage of the opportunities available to him at the law school. In addition to taking classes for his Masters and his law degree, Mr. Johnson is the articles editor of the National Security Brief and the Engagement Director of the Civil-Military Society. He also worked as a Deans Fellow for the Afghanistan Documentation Project investigating possible violations of international humanitarian law.

In addition to having the legal skills to succeed as a law clerk, Mr. Johnson has developed the professional experience to thrive in a courthouse setting. Unlike some students, Mr. Johnson brings a mature level of professional skill to his legal studies. In addition to his human intelligence work with the Special Forces, Mr. Johnson has also worked in the civilian defense space for BAE Industries. In both capacities, he learned about the importance of discipline and hard work. He is a responsible and committed professional who understands the seriousness of legal tasks and responsibilities. He will bring that experience with him as a law clerk, adding depth, context, and understanding to his work.

Finally, Mr. Johnson has the character necessary to be an exceptional clerk. I believe trust, competence, and carefulness are three qualities essential for a law clerk. Mr. Johnson embodies those qualities. He is responsible, organized, respectful, and analytically sharp. He writes well. He cares about law as part of a duty to public service and wishes to begin his legal career as a law clerk.

Please let me know if you need further information (202-274-6282 or [ferguson@wcl.american.edu](mailto:ferguson@wcl.american.edu)). Thank you.

Sincerely,

AGF

Andrew Guthrie Ferguson

Ferguson Andrew - [ferguson@wcl.american.edu](mailto:ferguson@wcl.american.edu)

# David Johnson

6016C Rock Cliff Lane, Alexandria, VA. 22315  
(423) 582-1482 | dj9433a@student.american.edu

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## WRITING SAMPLE

The attached writing sample is the first memorandum I submitted during my Summer 2020 internship at the Department of Justice (DOJ), Criminal Division, Narcotic and Dangerous Drug Section (NDDS). After a series of proffered meetings, a defendant signed a Statement of Facts that would be the basis of their guilty plea. Later, the defendant did not surrender to authorities pursuant to their plea agreement, so one of the NDDS trial attorneys requested to bring charges against the defendant. One of the trial attorney's concerns was that the defendant would object to the use of the signed Statement of Facts as evidence against them; therefore, he asked me to write a memorandum on the admissibility of the Statement of Facts.

Due to sensitive nature of the work performed by NDDS, all interns must sanitize anything they intend to use for a writing sample and submit the sanitized sample for review by NDDS. Because of this requirement, I made the following changes: I do not use the names of any person; I use Defendant and gender-neutral pronouns to refer to the defendant; beyond referring to Arizona, I do not specify locations; and I do not list any dates. This sample was approved by my direct supervisor and the attorney who requested the memorandum.

**Memorandum on the Use of Statement of Facts as Evidence Against Defendant in the District of Arizona.**

This memorandum explains that the Statement of Facts executed by Defendant on Date 5 is more than likely admissible as evidence, despite Defendant's potential challenges, for the proposed two-count Indictment against Defendant for 1) conspiracy to manufacture and distribute methamphetamine ("meth") knowing, intending, and having reasonable cause to believe that the controlled substance would be illegally imported into the United States, in violation of Title 21, United States Code, Sections 959(a), 960(b)(1)(H), and 963, and 2) conspiracy to import methamphetamine into the United States, in violation of Title 21, United States Code, Sections 952, 960(b)(1)(H), and 963. As detailed below, Defendant signed the Statement of Facts during the last meeting in a series of proffered meetings between Defendant, their attorney, Federal Bureau of Investigation ("FBI") agents, Drug Enforcement Administration ("DEA") agents, and Narcotic and Dangerous Drug Section ("NDDS") attorneys.

**I. Overview of Indictment and Statement of Facts**

During an investigation into a large-scale drug trafficking organization ("DTO") subgroup, an FBI agent and a DEA agent met with Defendant in City 1, Arizona on Date 1. The agents advised Defendant that the Defendant was there voluntarily and was not being placed into custody. Defendant remained and provided the agents with information on the activities of and communications between the members of this DTO subgroup, incriminating themselves. The agents advised Defendant to retain an American lawyer, and Defendant later hired Attorney A.

After Defendant hired Attorney A, NDDS informed Attorney A that their client faced criminal liability and that it was in Defendant's best interest to meet and potentially cooperate with the government. Afterwards, NDDS proffered Defendant on Dates 2, 3, and 4 pursuant to a

Proffer Agreement Defendant signed on Date 2, with Defendant signing a sheet at each of the subsequent meetings stating the Proffer Agreement was still in effect.

During the Date 4 meeting, Defendant agreed to plead guilty to an information and self-surrender. At the beginning of a meeting on Date 5 between Defendant, Attorney A, FBI and DEA agents, and NDDS attorneys, Defendant reviewed a Statement of Facts that would serve as the basis for Defendant's guilty plea by summarizing their involvement in a conspiracy to distribute meth from approximately 20XX until 20XX. NDDS Trial Attorney B explained that the Proffer Agreement did not cover the Statement of Facts and that if Defendant did not self-surrender at the time deemed appropriate by the government, the Statement would be used against Defendant in the government's case-in-chief. Defendant indicated that they understood, and Defendant and Attorney A signed the Statement of Facts.

Defendant was scheduled to surrender Date 6 but failed to appear citing safety concerns for their family. The U.S. government is now requesting permission to indict Defendant and plans to use the Statement of Facts as evidence.

## **II. Statement of Facts Admission**

### **A. Primary Challenge**

Defendant might challenge the admission of the Statement of Facts because they signed the Statement during a proffered meeting, and paragraph 6 of the NDDS Proffer Agreement states "no understandings, promises, or agreements have been entered into with respect to the Meeting other than those set forth in this agreement, and none will be entered into unless memorialized in writing and signed by all parties." The complete cooperation plea agreement that the Statement of Facts was part of was not written.

The government will likely prevail because: 1) the proffer agreement is ambiguous as to whether it would apply to a signed Statement of Facts at all, as paragraph 5 states that the agreement “does not apply to any other information provided at the Meeting,” 2) the Statement of Facts was part of a separate agreement from the original Proffer Agreement; 3) even if the Statement of Facts is not found to be part of a separate agreement, the Statement was made as part of a modification to the Proffer Agreement that Defendant violated.

## **B. Reasons the Statement of Facts is Admissible**

### **i. Statement of Facts is “Other Information”**

Paragraph 5 states that the agreement “is limited to the statements made by Client at the Meeting and does not apply to any oral, written, or recorded statements made by Client at any other time or to any other information provided at the Meeting.” Signing a statement of facts—and being clearly informed that the Statement of Facts is not covered by the Proffer Agreement—would likely constitute “other information provided at the Meeting.” The signed Statement of Facts was never intended to be protected by the Proffer Agreement; rather, it was intended to be “other information” that would form the basis of Defendant’s guilty plea.

### **ii. Statement of Facts is Part of a Separate Agreement**

Paragraph 1 of the Proffer Agreement states that the Proffer Agreement is not a cooperation, plea, or non-prosecution agreement. At the Date 4 proffered meeting, Defendant, who had initialed a sheet indicating that the Proffer Agreement was still in effect for this meeting, agreed to plead guilty to an information and self-surrender. By initialing the Proffer Agreement sheet, Defendant indicated that they understood that the cooperation plea agreement would not be covered by the Proffer Agreement, as stated in paragraph 1. Defendant also indicated that they understood that pleading guilty was not covered by the Proffer Agreement

when, at the Date 5 meeting, Trial Attorney B explained that the Statement of Facts, the basis of Defendant's guilty plea, would not be covered by the Proffer Agreement.

Defendant's potential challenge, that the separate and complete plea agreement was not memorialized in writing as indicated in Paragraph 6 of the Proffer Agreement, does not have merit. First, proffer agreements, as well as plea agreements, are to be interpreted according to contract principles. *United States v. Chiu*, 109 F.3d 624, 625 (9th Cir. 1997). Under Arizona law, parties to a contract can make a separate agreement from the original contract, even if the original contract required changes to be in writing. *Eng v. Stein*, 599 P.2d 796, 799–800 (Ariz. 1979); *see also Harbor Mech., Inc. v. Arizona Elec. Power Co-op., Inc.*, 496 F. Supp. 681, 686 (D. Ariz. 1980). Therefore, even if paragraph 6 of the Proffer Agreement required any further agreements to be in writing, the government and Defendant were able to make a separate agreement, the cooperation plea agreement, orally. Because the Statement of Facts was part of the cooperation plea agreement, which is separate from the Proffer Agreement, the Statement of Facts should be admissible.

### **iii. Statement of Facts is Part of a Modification to the Proffer Agreement**

Even if the cooperation plea agreement is found not to be a separate agreement from the Proffer Agreement, the cooperation plea agreement was an oral modification to the Proffer Agreement. Arizona law also allows for oral modifications to contracts, even if the original written contract was intended to express the complete agreement. *Eng v. Stein*, 599 P.2d 796, 799–800 (Ariz. 1979); *see also Harbor Mech., Inc. v. Arizona Elec. Power Co-op., Inc.*, 496 F. Supp. 681, 686 (D. Ariz. 1980). The new agreement between Defendant and the government, as modified, was that Defendant would provide the government with information in proffered

meetings, sign the Statement of Facts, and turn themselves over to the government in exchange for a cooperation plea agreement and the government only using the Statement of Facts, and not the other information Defendant provided in the proffered meetings, as evidence against Defendant except as otherwise provided for in the Proffer Agreement.

Even if the Statement of Facts is found to be information protected by the Proffer Agreement, the U.S. government should be permitted to use the Statement because Defendant materially violated the modified agreement. In Arizona, a party to a contract can rescind the contract and be excused from performance if the other party materially breaches the contract. *Zancanaro v. Cross*, 339 P.2d 746, 750 (Ariz. 1959). By not surrendering themselves, Defendant materially violated the modified agreement because the government was unable to perform the cooperation plea agreement since Defendant was not physically present to render their guilty plea. Because the modified agreement was rescinded, the government is released of its obligations and can use the Statement of Facts as evidence against Defendant.

Defendant might construct their failure to self-surrender as a guilty plea withdrawal in order to argue that this withdrawal is not sufficient to trigger the waiver of protections given by the Proffer Agreement. *See United States v. Rosemond*, 841 F.3d 95, 109 (2d Cir. 2016) (holding that pleading not guilty was insufficient to trigger the waiver provision of a proffer agreement). Under the original Proffer Agreement between the government and Defendant, Defendant's failure to surrender themselves, if construed as a guilty plea withdrawal, would not have violated the original proffer agreement and would have been insufficient to trigger the waiver of a provision. However, under the modified agreement, which required Defendant to surrender themselves and to plead guilty to the crimes outlined in the Statement of Facts, Defendant's failure to surrender himself and plead guilty is a direct violation of the agreement and sufficient



to trigger the waiver of his protections outlined in the proffer agreement. *See Fox v. Johnson*, 832 F.3d 978 (9th Cir. 2016) (holding that a government is no longer bound by a plea agreement when a defendant withdraws a guilty plea entered pursuant to a plea agreement) (citing *United States v. Jones*, 469 F.3d 563, 567 (6th Cir. 2006)).

### C. Other Potential Challenges

#### i. Federal Rule of Evidence 410

Defendant might try to challenge the use of the Statement of Facts by arguing that its use is barred by Federal Rule of Evidence 410, which bars statements by the defendants during plea discussions that did not result in a guilty plea or resulted in a later withdrawn guilty plea. The Supreme Court of the United States has held that a defendant can waive Federal Rule of Evidence 410 protections, as long as the waiver is knowing and voluntary. *See United States v. Mezzanatto*, 513 U.S. 196 (1995). Additionally, although the Supreme Court did not rule on the issue in *Mezzanatto* or in any other case, lower courts have held that the government can use a defendant's protection-waived statement in its case-in-chief, and not just use it to impeach the defendant as a witness or in rebuttal. *See e.g. United States v. Mitchell*, 633 F.3d 997, 1004 (10th Cir. 2011); *United States v. Sylvester*, 583 F.3d 285, 288–94 (5th Cir. 2009); *United States v. Hardwick*, 544 F.3d 565, 569–71 (3d Cir. 2008).

Defendant waived any protection given by Federal Rule of Evidence 410 by signing the Proffer Agreement, and when they signed the Statement of Facts after indicating that they understood that the government would be using the Statement as evidence if they did not self-surrender. Because Defendant waived this protection and did not self-surrender as agreed to, the government will more than likely be able to use the Statement of Facts as evidence in its case-in-chief.

**ii. Local Rule Civil Procedure 83.7**

Defendant might also challenge the government's use of the Statement of Facts as evidence by arguing that the plea agreement, whether separate from or a part of the Proffer Agreement, was not written because the U.S. District Court for the District of Arizona has a Local Rule of Civil Procedure, 83.7, that states, "No agreement between parties or attorneys is binding, if disputed, unless it is in writing signed by the attorney of record..." This rule is likely not an issue because it is a rule for civil procedure and not criminal procedure. However, if this rule is applicable despite the indictment being a criminal proceeding, Defendant and Attorney A both signed the Statement of Facts. The Statement of Facts, although it does not state the full plea agreement between the government and Defendant, is written proof that Defendant agreed to plead guilty. Defendant cannot dispute that they had created a cooperation plea agreement with the government in which Defendant agreed to surrender themselves and plead guilty.

**III. Conclusion**

Defendant signed the Statement of Facts after indicating that they understood that the Statement was part of a cooperation plea agreement and would be used as the basis of their guilty plea if they self-surrendered, and that the Statement would be used as evidence against Defendant in the government's case-in-chief if they did not self-surrender. Arizona contract law allowed the government and Defendant to make the cooperation plea agreement, whether as a separate agreement or as a modification to the Proffer Agreement, despite paragraph 6 of the Proffer Agreement. Defendant materially violated this agreement by not self-surrendering to the government in a time deemed appropriate by the government. Because of this violation, the government is relinquished of any obligation it might have had to refrain from using the Statement of Facts as evidence against Defendant.

## Applicant Details

First Name **Deron**  
 Middle Initial **L**  
 Last Name **Johnson**  
 Citizenship Status **U. S. Citizen**  
 Email Address [deronjohnson6@gmail.com](mailto:deronjohnson6@gmail.com)

Address	<div>Address</div> <div>Street</div> <div>1218 Oak Ridge Rd.</div> <div>City</div> <div>Corbin</div> <div>State/Territory</div> <div>Kentucky</div> <div>Zip</div> <div>40701</div> <div>Country</div> <div>United States</div>
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Contact Phone Number **6063449759**

## Applicant Education

BA/BS From **University of Kentucky**  
 Date of BA/BS **May 2013**  
 JD/LLB From **Vanderbilt University Law School**  
<http://law.vanderbilt.edu/employers-cs/judicial-clerkships/index.aspx>  
 Date of JD/LLB **May 13, 2016**  
 Class Rank **School does not rank**  
 Law Review/Journal **Yes**  
 Journal(s) **Vanderbilt Journal of Transnational Law**  
 Moot Court Experience **Yes**  
 Moot Court Name(s) **Bass Berry & Sims Moot Court Competition**

## Bar Admission

Admission(s) **Kentucky, Tennessee**

### **Prior Judicial Experience**

Judicial Internships/  
Externships      **Yes**  
Post-graduate Judicial  
Law Clerk      **Yes**

### **Specialized Work Experience**

### **Recommenders**

Haw-Allensworth, Rebecca  
rebecca.haw@vanderbilt.edu  
615-322-6568

Vandenbergh, Michael  
michael.vandenbergh@vanderbilt.edu  
615-322-6763

Cheng, Edward  
edward.cheng@vanderbilt.edu  
(615) 875-7630

David, Bragg  
judgedbragg@gmail.com

**This applicant has certified that all data entered in this profile and  
any application documents are true and correct.**

70 Music Square West, Apt. 142  
Nashville, TN 37203

September 9, 2020

The Honorable Elizabeth W. Hanes  
United States District Court for the Eastern District of Virginia  
Spottswood W. Robinson III & Robert R. Merhige, Jr., U.S. Courthouse  
701 East Broad Street, 5th Floor  
Richmond, VA 23219

Dear Judge Hanes:

I am writing to apply for the posted opening for a two-year clerkship in your chambers beginning in the fall of 2021. I was recently informed that I would not be retained in my most recent position due to the economic fallout from the COVID-19 pandemic. I have decided to use this opportunity to pursue a goal that I have had since law school: to obtain a federal clerkship. I have a specific interest in clerking in your chambers for two reasons. First, I had an excellent experience in a previous clerkship; because that experience was so fulfilling, I am particularly interested in clerkships with a term longer than a year. Second, I am originally from southeastern Kentucky, not far from the Virginia border, and have lived in Nashville for the past several years. I would love to remain in the South while clerking, if possible. Accordingly, completing a federal clerkship while living in Richmond would be ideal.

I know I can make a substantial contribution to your chambers, as I have the prior judicial clerkship and legal work experience you prefer. Through my prior experience as a clerk for a state trial judge in Tennessee and a summer intern for a federal appellate judge in Kentucky, I have learned what it takes to be a successful clerk and how to work well in a judge's chambers. Additionally, in both my schooling and my career, I have worked hard to develop my research and writing skills—skills that I know are essential to the work that law clerks do. As a result, I have found that I have performed best in projects where my research and writing skills are critical to success. If given the opportunity, I look forward to putting those skills to work in your chambers.

I have enclosed a resume, a writing sample, and a law school transcript. My recommenders are the Honorable David M. Bragg, Circuit Court Judge for the 16<sup>th</sup> Judicial District in Murfreesboro, Tennessee, (615) 898-8001; and Professor Rebecca Haw Allensworth, (615) 322-6568, Professor Edward K. Cheng, (615) 875-7630, and Professor Michael P. Vandenberg, (615) 322-6763, all of Vanderbilt Law School. Their letters will be attached in OSCAR by the school.

If I can provide you with any additional information, please do not hesitate to contact me. Thank you for your consideration, and I look forward to hearing from you soon.

Sincerely,



Deron L. Johnson

## DERON L. JOHNSON

70 Music Square West, Apt. 142, Nashville, TN 37203 (606) 344-9759 deronjohnson6@gmail.com

### EDUCATION

**VANDERBILT UNIVERSITY LAW SCHOOL**, Nashville, TN

**J.D., 2016**

GPA: 3.176

**Honors and Activities:** VANDERBILT JOURNAL OF TRANSNATIONAL LAW, Authorities Editor; Dean's Scholar; Bass Berry & Sims Moot Court Competition; OUTlaw, Treasurer; Professionalism in Practice, Optional Seminar; Law Students for Social Justice; Legal Aid Society; Ambassadors at Vanderbilt Law School.

**UNIVERSITY OF KENTUCKY**, Lexington, KY

**B.A., Political Science, *cum laude*, 2013**

GPA: 3.597

**Honors and Activities:** Singletary Scholar; Dean's List; Chellgren Fellow; University of Kentucky Chorale, President; Phi Gamma Delta Fraternity, Philanthropy Chair, DanceBlue Captain; K-Crew Freshman Orientation Leader; Common Reading Experience, Selection Committee; AcoUstiKats, member.

### WORK EXPERIENCE

**CORNELIUS & COLLINS, LLP**, Nashville, TN

**Associate, March 2019-June 2020**

- Litigated civil cases through all pre-trial stages in state and federal court, primarily in insurance defense concentrated in the areas of premises liability, construction liability, and medical malpractice.
- Drafted and responded to written discovery, including interrogatories, requests for production of documents, and requests for admission.
- Prepared for and took depositions of party opponents, witnesses, and experts.
- Drafted and argued pre-trial motions, with extensive record of success.
- Spearheaded firm-wide search for eDiscovery vendor, and independently performed a 6-month eDiscovery document review and production process using selected vendor Logikcull in 20+ party construction case.

**SHERRARD ROE VOIGHT & HARBISON, PLC**, Nashville, TN

**Contract Attorney, August 2018-March 2019**

- Participated in discovery preparations for civil cases in the areas of business litigation and antitrust, including a multi-billion dollar dispute between large merchants and credit card companies.
- Reviewed significant numbers of documents and gained experience with eDiscovery software systems Relativity and Nextpoint.

**BAYDOUN & KNIGHT, PLLC**, Brentwood, TN

**Law Clerk, August 2017-July 2018**

- Worked as a law clerk for a small law firm while studying for the Tennessee Bar Exam.
- Researched and drafted memoranda, motions, and case filings in civil cases in both state and federal court, particularly in the areas of business litigation and family law.
- Worked closely with partners in preparing questions for depositions and arguments for court appearances.
- Participated in case settlement negotiations by evaluating strength of client's case and drafting correspondence to opposing counsel.

## DERON L. JOHNSON

70 Music Square West, Apt. 142, Nashville, TN 37203 (606) 344-9759 deronjohnson6@gmail.com

**THE HONORABLE DAVID M. BRAGG, CIRCUIT COURT JUDGE, 16TH JUDICIAL DISTRICT,**  
Murfreesboro, TN **Judicial Clerk, September 2016-August 2017**

- Clerked for state criminal trial court judge.
- Reviewed and evaluated motions and responses set on weekly motion docket or for special hearing.
- Researched and drafted memoranda advising the Court of pertinent facts and applicable law relating to motions, including a recommended decision and reasoning for the Court.
- Drafted orders reflecting the ruling of the Court, including findings of fact and conclusions of law.
- Administrated and observed 20+ jury trials.
- Independently reviewed and responded to pro se filings and letters.

**APPALACHIAN CITIZENS' LAW CENTER, Whitesburg, KY** **Intern, July-August 2015**

- Researched and drafted memoranda, motions, and case filings advocating for coal miners in areas of environment, miners' health, and miners' safety.

**OFFICE OF THE TENNESSEE ATTORNEY GENERAL, Nashville, TN** **Law Clerk, May-June 2015**

- Clerked in the Civil Rights and Claims division.
- Researched and drafted memoranda and case filings in personal injury and workers' compensation claims against the State of Tennessee.

**THE HONORABLE EUGENE E. SILER, JR., U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT, London, KY** **Intern, May-August 2014**

- Researched and drafted memoranda advising the Court of pertinent facts and applicable law relating to cases on appeal, including a recommended decision and reasoning for the Court.
- Assisted in preparing opinions by editing, proofreading, and checking Bluebook citations.
- Observed appellate oral arguments in Cincinnati.

## BAR ADMISSIONS

- Tennessee, 2018
- Kentucky, 2017

## PERSONAL

- Interests include following the Kentucky Wildcats, the Chicago Cubs, and the thoroughbred racing industry.
- Board of Trustees Chair, music ministry participant, and member, Belmont United Methodist Church, Nashville, TN.
- Nashville Symphony subscriber; frequent symphony and opera attendee and classical recording collector.
- Classical and jazz pianist and church organist; performed around the United States and in Europe.

## DERON L. JOHNSON

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70 Music Square West, Apt. 142, Nashville, TN 37203      (606) 344-9759      [deronjohnson6@gmail.com](mailto:deronjohnson6@gmail.com)

### LIST OF RECOMMENDERS

**THE HONORABLE DAVID BRAGG**

Circuit Court Judge, 16th Judicial District  
Rutherford County Judicial Center  
116 W. Lytle Street, Suite 6120  
Murfreesboro, TN 37130  
(615) 898-8001

**REBECCA HAW ALLENSWORTH**

Tarkington Chair in Teaching Excellence & Professor of Law  
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131 21st Avenue South  
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**MICHAEL P. VANDENBERGH**

David Daniels Allen Distinguished Chair of Law  
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**Deron Johnson**  
**Vanderbilt University Law School**  
**Cumulative GPA: 3.176**

**Fall 2013**

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Torts	Edward Cheng	B	4	
Contracts	Rebecca Allensworth	B+	4	
Life of the Law	Suzanna Sherry/James Rossi	P	1	
Legal Writing I	Roger Alsup/Catherine Deane	B+	2	
Civil Procedure	Brian Fitzpatrick	B+	4	

**Spring 2014**

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Legal Writing II	Roger Alsup/Catherine Deane	B+	2	
Criminal Law	Nancy King	B-	3	
Property	Michael Vandenberg	B	4	
Regulatory State	Edward Rubin	B+	4	
Constitutional Law I	Mark Brandon	B	3	

**Summer 2014**

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Externship-Outside Nashville	Susan Kay	W	0	

**Fall 2014**

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Evidence	Edward Cheng	B+	4	
Campaign Finance & Elections	Robert Cooper/John Ryder	B+	2	
Journal of Transnational Law	Ingrid Wuerth	P	0	
Corporations & Business Entities	Phillip Ricks	A-	4	
Constitutional Law II	James Blumstein	A-	3	
Moot Court Competition	Susan Kay	P	1	

**Spring 2015**

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Remedies	Sean Seymore	B	3	
Wills and Trusts	Jeffrey Schoenblum	B	4	

Criminal Procedure: Investigation	Christopher Slobogin	B	3
Federal Courts & Federal System	Brian Fitzpatrick	W	3
Journal of Transnational Law	Ingrid Wuerth	P	1

#### Fall 2015

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Journal of Transnational Law Note	Ingrid Wuerth	P	1	
Professional Responsibility	David Hudson	B+	3	
Journal of Transnational Law	Ingrid Wuerth	P	1	
The Food System Seminar	John Ruhl	A-	3	
The Democratic Constitution	Neal Devins	P	1	
Human Trafficking	John Richmond	P	1	
Conflict of Laws	Erin O'Hara	B-	4	
Administrative Law	Kevin Stack	B-	3	

#### Spring 2016

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Statistical Concepts for Lawyers	Edward Cheng	B	3	
Truth, Lies, and Justice	Sara Myers	P	1	
Trial Advocacy	Sarah Daughtrey/ Sheila Calloway	P	3	
Federal Courts & Federal System	Suzanna Sherry	A-	4	
Journal of Transnational Law	Ingrid Wuerth	P	1	
Technology in Legal Practice	Marc Jenkins	B-	3	

#### Grading System Description

Vanderbilt Law School Grading Scale

A+ = 4.3  
A = 4.0  
A- = 3.7  
B+ = 3.3  
B = 3.0  
B- = 2.7  
C+ = 2.3  
C = 2.0  
C- = 1.7  
D+ = 1.3  
D = 1.0  
D- = 0.7  
F = 0.0

GPA calculations do not include hours accumulated in courses in which a Pass (P), Withdrawal (W), Incomplete (I) (a temporary grade that may become permanent), or In Progress (IP) is received. Dean's List designation for a semester represents the top 20% by semester GPA. Vanderbilt, however, does not publish a cumulative ranking of its students.

This Grade List is an unofficial document prepared by the student. The use of the information contained herein should be limited to the purposes for which it was provided to you.

September 10, 2020

The Honorable Elizabeth Hanes  
Spottswood W. Robinson III & Robert R. Merhige,  
Jr., U.S. Courthouse  
701 East Broad Street, 5th Floor  
Richmond, VA 23219

Dear Judge Hanes:

I write this letter to strongly recommend my student, Deron Johnson, for a position in your chambers. I have had the pleasure of teaching Deron in Contracts his 1L year and got to know him well through office hours—he was often there to learn more, ask deeper questions, and in the process evince an interest in the law that was unparalleled among his 1L class, and informally at lunch (I take students out to lunch if they are interested—Deron accepted and it was great to share that informal time with him!). My impression of him, in his first year of law school, was that both in and out of class he displayed a curiosity and intellectual sophistication uncommon among first year students. In class he was no different. I use an intense, no-passing Socratic style when I teach, which many students find intimidating. He excelled in this system, so much so that I found myself gravitating towards him when I found the class in a tough spot and we needed someone to get us back on track. His answers displayed a level of preparation and ability to think on his feet that was far above what I expect in 1Ls.

Around campus, Deron was very active, and was clearly a respected member of his class. He participated in the moot court competition because he is interested in litigation (again a great reason to clerk), and served on a journal to broaden his exposure to legal argument and his writing and editing skills.

Deron is already a proven clerk. First, he served as a summer clerk for the Honorable Eugene Edward Siler, Jr., of the Sixth Circuit, after his 1L year and spoke absolutely glowingly of the experience. He called it “one of the most formative experiences” in his life, and said that he learned more about law—and became more inspired to be a great lawyer—in that summer than in any other part of his law school career. He talked about tackling tough assignments and that the experience was like being “kicked into the deep end of the pool without knowing how to swim” and that he learned so much that way. I do not doubt it at all, from what I have observed of Deron, he is extremely able to rise to challenges, and to use his intellect, good humor, and professionalism to personally excel and perform. I am so thrilled that he is pursuing post-law-school clerkships, because not only will he love the experience but he will bring so much to any chambers he is a part of.

Then, after law school Deron went on to clerk for David M. Bragg, a Circuit Court judge in Murfreesboro. Having experience as a clerk in both federal and state courts makes him a unique candidate among clerkship applicants. As does the several years of practice experience that he has obtained in the interim. His extensive legal experience and his strength as a student will make for an extremely valuable clerk.

Perhaps above all this, Deron is an absolute delight to get to know personally. Having interacted with him extensively, I can honestly say he is one of the most fun, warm, personable students I have ever had. He will make a wonderful addition to any judge's chambers. Please contact me if you would like to hear more about Deron.

Sincerely yours,

Rebecca Haw Allensworth  
Professor of Law

Rebecca Haw-Allensworth - rebecca.haw@vanderbilt.edu - 615-322-6568

September 10, 2020

The Honorable Elizabeth Hanes  
Spottswood W. Robinson III & Robert R. Merhige,  
Jr., U.S. Courthouse  
701 East Broad Street, 5th Floor  
Richmond, VA 23219

Dear Judge Hanes:

I am pleased to recommend Deron Johnson, a 2016 graduate of Vanderbilt University Law School, for a judicial clerkship. Deron is a talented young lawyer with clerking and litigation experience. He is an engaged, thoughtful person with a strong desire for public service. Having already clerked for a state circuit judge, he will be able to hit the ground running, and he will be a team player and a credit to the chambers throughout the course of his career.

Deron first impressed me as a student in my property class. He was an active, curious student. He responded well to questions in class and was a frequent volunteer. He did not just speak to hear himself talk, and he demonstrated a desire to get to the bottom of tough analytical and social issues. For example, I use the *numerus clausus* principle – the idea that property can only be conveyed and held in a limited number of forms – as a way to induce the students to think about the function that rigidity plays in property law. Most students dutifully take notes on the topic but cannot apply the concept to new problems and cannot explain its costs and benefits. Deron was different. He read the relevant material carefully, and we had an extended discussion about *numerus clausus* during office hours. I was impressed throughout with his analytical skills and his tenacity. He earned a B in the class based on his written final examination, but he left me with no doubt about his ability to function as one of the top members of the class.

In addition, while a student Deron demonstrated a level of focus and maturity that is unusual among law students. Knowing that he wanted to be a litigator, he structured his summers, his courses and his extracurricular activities to put him in the best position to be a great one. He participated in the moot court competition, but I was particularly impressed with his decision to become an Authorities Editor for the *Vanderbilt Journal of Transnational Law*. Although he did not have a strong interest in international law, he recognized that the Authorities Editor position would enable him to focus on editing, proofreading, and Bluebook skills. He truly enjoys legal research and writing, and the written materials he provided to me while a student were concise, thoughtful, and easy to read.

After graduation, Deron clerked for the Honorable David M. Bragg in the 16th Judicial District of Tennessee, where he performed the traditional tasks of a law clerk -- reviewing and evaluating motions and responses, as well as researching and drafting memoranda. This experience also allowed him to observe and assist with jury trials, and to review pro se filings and letters. After his clerkship, Deron gained further experience as an attorney focusing on civil cases in both state and federal court in the areas of business litigation and antitrust, insurance defense, and premises liability. Given his core abilities and extensive experience, Deron will be able to hit the ground running and will be willing and able to handle tasks ranging from the most mundane to the most sophisticated. He also was very popular among his peers, and he will be an excellent colleague and leader among his fellow law clerks in the courthouse.

Thank you for considering Deron. If you have any questions, please do not hesitate to contact me at (615) 322-6763.

Sincerely,

Michael P. Vandenberg  
David Daniels Allen Distinguished Chair of Law

Michael Vandenberg - michael.vandenberg@vanderbilt.edu - 615-322-6763